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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 572

HAROLD E. VICKERS,

Appellant,

vs.

TOWNSHIP COMMITTEE OF GLOUCESTER TOWNSHIP, *et al.*,

Appellees.

On Appeal from New Jersey Supreme Court

STATEMENT OF JURISDICTION

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IN THE

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No. _____

HAROLD E. VICKERS,

Appellant,

vs.

TOWNSHIP COMMITTEE OF GLOUCESTER TOWNSHIP, *et al.*,

Appellees.

Statement as to Jurisdiction

Appellant, Harold E. Vickers, submits herewith his statement particularly enumerating the basis upon which this Court has jurisdiction on appeal to review the judgment of the Supreme Court of New Jersey, reversing a judgment of the Superior Court of New Jersey, Appellate Division, and reinstating a judgment of the Superior Court of New Jersey, Law Division.

The Opinion Below

The opinion of the Supreme Court of New Jersey is reported officially at 37 N. J. 232, and unofficially at 181 A. 2d 129. The opinion of the Superior Court of New Jersey, Appellate Division is reported officially at 68 N. J. Super. 263 and unofficially at 172 A. 2d 218. The oral opinion of the Superior Court, Law Division is not reported.

Jurisdiction

1. This is an appeal from a decision of the New Jersey Supreme Court sustaining the validity of Article XI, Section 1100, Subsections 42 and 43 of the Zoning Ordinance of the Township of Gloucester which prohibits trailers or mobile homes from being located anywhere within the municipality. The ordinance was enacted pursuant to New Jersey Constitution, Article IV, Section VI, paragraph 2, empowering the legislature to enact zoning laws, and Title 40, Article 55, Sections 30, 31, Revised Statutes of New Jersey, 1937, (N.J.S.A. 40:55-30-31) establishing the power of a municipality to create districts and regulate structures and setting forth purposes to guide such regulation.

2. The Supreme Court of New Jersey rendered its opinion on May 7, 1962. An order extending the time to apply for a rehearing in the Supreme Court of New Jersey was entered on May 17, 1962, and a timely application for rehearing was made on May 24, 1962. Appellant's petition for rehearing was denied on June 11, 1962. Notice of Appeal to this Court was filed by appellant with the Clerk of the Supreme Court of New Jersey on August 6, 1962. An order extending the time to docket this appeal with the Clerk of this Court for 30 days was entered on October 3, 1962 by the Chief Justice of the Supreme Court of New Jersey.

3. The jurisdiction of this court upon appeal is conferred by 28 U.S.C.A. Section 1257 (2). Appellant challenges the validity of Article XI, Section 1100, Subsections 42 and 43 of the zoning ordinance, a "statute of a state" within the meaning of that provision, on the ground that it is repugnant to the Constitution of the United States, and the decision of the highest court of the State of New Jersey was in favor of its validity.

4. Cases believed to sustain the jurisdiction of this Court on Appeal include: *Village of Euclid, Ohio v. Ambler Realty Corp.*, 272 U. S. 365, 41 S. Ct. 114, 71 L. Ed. 303 (1926); *Zahn v. Board of Public Works of Los Angeles*, 274 U. S. 325, 47 S. Ct. 594, 71 L. Ed. 1074 (1926); *Nectow v. City of Cambridge*, 277 U. S. 183, 48 S. Ct. 447, 72 L. Ed. 842 (1928); *Goldblatt v. Town of Hempstead, New York*, 369 U. S. 590, 82 S. Ct. 987, 8 L. Ed. 2d 130 (1962).

5. A copy of the zoning ordinance of the Township of Gloucester as enacted July 1, 1957, not officially reported, is attached hereto as Appendix F. Amendments thereto, not pertinent to the instant appeal, have not been reproduced. The pertinent part of the amendment of April 22, 1960, which constitutes an addition to the ordinance, and is here in issue, is as follows:

> "Article IV, Section 442: Trailer, Trailer-Coach or Camp-Car: Any unit which is, or may be, used for living, sleeping, or business purposes by one or more persons and that is equipped with wheels or similar devices used for the purpose of transporting said unit from place to place, whether it be self-propelled or otherwise, and whenever the word 'trailer' is used herein it shall mean and include 'trailer coach' and 'camp car'; excepting, however, that a trailer used as a temporary office for administrative purposes in connection with the doing of construction work in the Township of Gloucester and which has no sanitary facilities attendant thereto, is not within the meaning of this definition."
>
> "Article IV, Section 443: Trailer Camp or Trailer Park: Any place, area or tract of land which is so designed or intended for placing or locating thereon a trailer, trailer-coach or camp-car, one or more, as above defined, other than a garage or other similarly

enclosed type of building in which such vehicles may be placed."

"Section 1100 of ARTICLE XI is amended by adding thereto the following sub-paragraphs:

"(42) The keeping, locating, parking, storing or maintaining of a trailer, trailer-coach or camp-car, other than within a garage or similarly enclosed building, and while such a vehicle is within such garage or other similarly enclosed building it shall not be used for living or sleeping accommodations nor shall sanitation facilities be attached thereto."

"(43) Keeping, locating, establishing, maintaining or operating a trailer camp, trailer park, camp site or picnic ground."

Questions Presented

The following questions are presented by this appeal:

1. Whether Article XI, Sec. 1100 (43) of the Zoning Ordinance of the Township of Gloucester insofar as it prohibits the establishment or the operation of a trailer park anywhere within that municipality is invalid as violating Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving appellant of his property without due process of law.

2. Whether Article XI, Sec. 1100 (43) of the Zoning Ordinance of the Township of Gloucester insofar as it prohibits the establishment or the operation of a trailer park anywhere within that municipality is invalid as violating Section 1 of the Fourteenth Amendment to the Constitution of the United States by denying appellant the equal protection of the laws.

3. Whether Article XI, Sec. 1100 (42) of the Zoning Ordinance of the Township of Gloucester by prohibiting the keeping, parking or maintaining of a trailer coach anywhere within the municipality other than in a closed building; and by further prohibiting the use of any such trailer coach for living or sleeping accommodations even within such closed building, is invalid as violating Section 1 of the Fourteenth Amendment to the Constitution of the United States by depriving appellant of his property without due process of law.

4. Whether Article XI, Sec. 1100 (42) of the Zoning Ordinance of the Township of Gloucester by prohibiting the keeping, parking or maintaining of a trailer coach anywhere within the municipality other than in a closed building; and by further prohibiting the use of any such trailer coach for living or sleeping accommodations even within such closed building, is invalid as violating Section 1 of the Fourteenth Amendment to the Constitution of the United States by denying appellant the equal protection of the laws.

Statement of the Case

On July 1, 1957 Gloucester Township adopted a comprehensive zoning ordinance establishing Residence Districts "A", "B", "C", "D", a Business District, an Agricultural District and an Industrial District. The ordinance enumerated the uses permitted within the residence, business, and agricultural districts, but did not mention trailers, mobile homes, or mobile home parks. The provision regulating the uses within the industrial district was drafted in different form: it permitted land to be used and buildings to be erected for any lawful purpose with the exception of 41 specified uses of an obnoxious industrial character. Only those dwellings which conformed with the requirements specified for the "A" residence district and were approved by the local Board of Adjustment were permitted in the

industrial district. "A" residence district houses were required to be "one family detached dwellings" located on a lot not less than 75 by 125 feet with at least 800 square feet of usable first floor area. Mobile homes or mobile home parks were not among the excluded uses.

On September 3, 1957, the Township adopted a trailer ordinance, "An Ordinance to Regulate and Control Trailers, Trailer Coaches, Camp Cars and Trailer Camps". The combined effect of the zoning and trailer ordinances was to exclude trailers or mobile homes from the residential, business and agricultural district but permit them in the industrial districts.

Gloucester Township is a rural municipality of about 23 square miles in Camden County, New Jersey, very close to the Philadelphia metropolis. 1959-1960 statistics show it had a population of about 17,500 persons living in 4,113 houses as compared with a population of 7,950 persons in 1950 (Appendix B, p. 8a). "The northern half of the Township is already quite densely settled, mostly with small home development and neighborhood business areas along and adjacent to old and new highways. The southern half [where the plaintiff's property is situated] is very largely undeveloped, with no established character as yet. Most of the vacant land throughout the Township is zoned for industrial use, although there is none now" (Dissenting Opinion, Appendix C, p. 45a).

The appellant owns twenty acres of land in the industrial zone, 10 acres of which he purchased in November, 1957 and the remainder, located across the adjacent road, was purchased in September, 1959. The industrial area surrounding the appellant's property is for the most part undeveloped. The structures and uses adjacent to and in the immediate vicinity of appellant's land are: a one story shack used for repairs of television sets; an old bus used

as living quarters; a farm house and barn; several dilapidated shacks; a one story structure utilized as a church; and some dwellings, ranging from bungalow shanties to modest homes. Photographs of these uses were in evidence at the trial.

On August 26, 1959, the appellant applied to the township for a permit to operate a trailer or mobile home park on the original 10 acre tract. The Township Committee denied the application on December 8, 1959. As a result the appellant instituted this action on December 30, 1959, wherein he alleged compliance with the Trailer Ordinance and sought a judgment compelling the Township to issue to him a permit to operate his proposed trailer or mobile home park. The trial of the issue was adjourned for an unspecified time to permit the appellant to amend his application to remove minor defects, and permit the Township any administrative action desired. However, in the interim, on April 22, 1960, the Township enacted an amendment to the zoning ordinance, now under attack, which prohibited the keeping, parking, or maintaining of a trailer coach, or the operation of a trailer park anywhere within the municipality. Appellant then filed a second complaint challenging the validity of the ordinance.

Proceedings in the State Courts

The appellant raised the constitutional questions included in his Notice of Appeal to this Court upon the institution of his action challenging the validity of the Zoning Ordinance by asserting in paragraph 13 of his second complaint, that the zoning ordinance "deprives plaintiff of the use of his property without due process of law, deprives plaintiff of the equal protection of the laws and is otherwise violative of the rights guaranteed to said plaintiff and others similarly situate by virtue of the Constitution of the State of New Jersey and of the United States of America."

The decision of the trial court entered July 1, 1960 sustained the validity of the ordinance and dismissed the appellant's action. Pursuant to the statutes of New Jersey, the appellant appealed to the Appellate Division of the Superior Court of New Jersey again raising the question of the constitutionality of the zoning ordinance. The opinion of the Appellate Division which reversed the holding of the lower court stated in its opening paragraph:

> "Plaintiff contends: * * * (2) Complete prohibition of trailer parks in every part of the municipality as affected by the amendatory zoning ordinance and repeal of the trailer regulatory ordinance, constituted an arbitrary and unreasonable exercise of the zoning power and of the police power."

That court concluded also:

> "* * * that the amendment of the Zoning Ordinance of April 22, 1960 must be set aside as an unreasonable and arbitrary exercise of the zoning power."

The respondent, Township Committee of Gloucester Township, then appealed to the Supreme Court of New Jersey which reversed the holding of the Appellate Division and reinstated the judgment of the trial court.

The Federal Questions Are Substantial

Since the statute in question discriminates against mobile home dwellers, it is a denial of equal protection of the laws and a deprivation of liberty and property without due process of law.

Although this case questions the constitutionality of a "state statute" characteristically labeled a zoning ordinance, its issues go far beyond the familiar inquiry into

the appropriate use of land in a given locale or district. *Village of Euclid, Ohio* v. *Ambler Realty Co.*, 272 U. S. 365, 41 S. Ct. 114, 71 L. Ed. 303 (1926). There is a clear inference that legislation relating to trailers and mobile homes, such as we have in the instant case, is based on unlawful bias and prejudice against the mobile home dweller. Compare *Buchanan* v. *Warley*, 245 U. S. 60, 38 S. Ct. 16, 62 L. Ed. 149 (1917). This is evident in the decision of the court below which found that no locale or district in a heterogenous, largely undeveloped, community—providing for every type of use with the exception of obnoxious industries—was appropriate for trailers or mobile homes. The dissenting opinion below said (Appendix C, p. 38a).

> "In my opinion legitimate use of the zoning power by such municipalities does not encompass the right to erect barricades on their boundaries through exclusion or too tight restriction of uses where the real purpose is to prevent feared disruption with a so-called chosen way of life. Nor does it encompass provisions designed to let in as new residents only certain kinds of people, or those who can afford to live in favored kinds of housing, or to keep down tax bills

"That this kind of motivation was not entirely absent in the barring of mobile homes from Gloucester Township, is indicated by the statement at oral argument of the township's counsel, during the course of discussion of the local reasons for the action, *that people who lived in trailers were a shifting population without roots and did not make good citizens.* Aside from the fact that such characterizations are today without true foundation, the statement is an example of frequently found resentment and distrust by present residents of newcomers, including renters, who vote on school budgets and the election of local officials with the power over municipal appropriations, but who do not pay real estate taxes directly or in sufficient amount to cover the cost of local services rendered to them." (Emphasis added.)

of present property owners. When one of the above is the true situation deeper considerations intrinsic in a free society gain the ascendency and courts must not be hesitant to strike down purely selfish and undemocratic enactments."

The admonition in an article on planning and zoning law is apposite. It said, "It has not been generally realized that in many instances the problems arising in this field of constitutional law are closely akin to those involved in civil liberties law and call for similar attitudes toward the exercise of governmental power." Williams, *Planning Law and Democratic Living*, 20 Law and Contemporary Problems 347, 350 (1955). A question of the denial of equal protection of the laws and deprivation of liberty and property without due process arises herein.

The standards of decision established by this Court for protecting the constitutional rights of citizens from arbitrary exercise of governmental zoning power have been abrogated by the decision of the New Jersey Supreme Court below.

A. The principles announced in *Euclid* v. *Ambler Realty Co.*, *supra*, where it was held claims of deprivation of property without due process of law were subject to the familiar test that "it must be said before the ordinance can be declared unconstitutional that such provisions are clearly arbitrary and unreasonable having no substantial relationship to the public health, safety, morals and general welfare", 272 U. S. at 395, have been challenged in their application by the decision below. That decision fails to deal with or explain several aspects of the *Euclid* doctrine which appear to require a contrary result in this case. These several aspects are as follows:

(1) The exclusion of trailers or mobile homes from the industrial district is arbitrary and unreasonable. The facts do not sustain the finding of a substantial relationship to the public health, safety, morals and general welfare. Compare *Nectow* v. *City of Cambridge*, 277 U. S. 183, 48 S. Ct. 447, 77 L. Ed. 842 (1928). That the encouragement of industries in the community is a beneficial and desirable goal is not disputed. However, the zoning district involved is "industrial." It is not an "industrial park" district as the majority opinion would imply. Permissive uses include all types of factories, except those of an obnoxious character. Lot sizes on which such installations are permitted are small. There are no standards established protecting against their "unsightly appearance" or against congestion of people and traffic. Manifestly in such areas the so-called "unsightly appearance" and "congestion" alleged to be created by trailer or mobile homes and mobile home parks (however well regulated and arranged) cannot have the deleterious affects possibly to be anticipated in highly residential districts or even "industrial park" districts. Moreover, the majority opinion is devoid of any recitation of facts which would serve to connect trailer or mobile homes located in parks to resultant harm to the industrial district. We find merely the unsubstantiated speculation, that "Industry may shun the disharmony of discordant uses side by side." (Appendix B at p. 16a). Can this hypothesis on the part of a municipal government serve to eliminate all mobile homes and their dwellers from the community with the resultant deprivation of constitutional rights. If so of what significance is the use of the term "substantial relationship" in the test?

(2) The decision in *Euclid* recognized that a paramount public interest would negate the presumption of valid municipal action. This court said at 272 U. S. at 390, "It was not meant * * * however, to exclude the possibility of cases

where the general public interest would so far outweigh the interest of the municipality that the municipality would not be allowed to stand in the way". Brief reference need only be made to the degree to which both the national and state governments are striving toward the improvement of the general standard of living, including the development of new and better housing. The statistics at p. 17, *infra*, indicating that trailers are being manufactured at a rate greater than 10% of the new single family dwelling starts, reflect the growing use of mobile homes for improved housing. Indeed, Federal legislation has facilitated the growth and development of mobile homes and mobile home parks. 12 U.S.C.A., Sec. 1713, authorizes the Federal Housing Administration to insure first mortgages on real estate, "upon which there is located or to be constructed facilities for trailer coach mobile dwellings" (Secs. 1713 a (1), 1713 (b)). "Rental housing," under the act includes mobile home parks permitting the occupancy of land "in consideration of the payment of agreed charges, whether or not, by the terms of the agreement, such payment over a period of time will entitle the occupant to ownership of the premises or space in a trailer court or park properly arranged and equipped to accommodate trailer coach mobile dwellings". (Secs. 1713 (a) (6)). Surely, municipalities with room for expansion should not be able to stand in the way of the kind of progress represented by the modern mobile home.

(3) With the nation's population mushrooming and urban residents streaming to the suburban and rural countryside, the problem of zoning in the outlying areas has become increasingly important. Planners are given vast areas of undeveloped territory to layout and regulate for future use and development, and as the court said in *Euclid*: "A regulatory ordinance, which would clearly be valid as applied to the great cities, might be clearly invalid as ap-

plied to rural communities" 272 U. S. at 387. This factor clearly presents itself as a problem with the decision below. It is quite apparent that in Gloucester Township, as with most rural areas, there are few existing uses to serve as guides and also as a factual basis for zoning classifications. Compare *Zahn v. Bd. of Public Works of Los Angeles*, 274 U. S. 325, 47 S. Ct. 594, 71 L. ed. 1074 (1924). As the dissenting opinion noted, "Most of the vacant land throughout the township is zoned for industrial use, though there is none now." (Appendix C p. 45a). On the broadest terms, how may a undeveloped municipality substantiate its classification, other than on the whim or hopes of its governing body, which not infrequently is composed of citizens of long standing in the community who may resent its changing character. Nevertheless, although at least one writer in the field has criticized the zoning of undeveloped land, Note, *Non-Euclidian Zoning: Its Theoretical Validity and Practical Desirability in Undeveloped Areas*, 30 U. of Cincinnati L. Rev. 297 (1961), such land is subject to the zoning power. The follow up question, which places the decision below on more tenuous grounds is how, if the facts are sparse in assisting in the overall layout of the undeveloped area, can one determine that a specific use, such as a trailer or mobile home, which has thus far not been held to be a nusiance *per se* and inherently undesirable, but expressly to the contrary, *Kessler v. Smith*, 142 N. E. 2d 231-235 (Ohio, 1957); *Smith v. Building Inspector for Tp. of Plymouth*, 346 Mich. 57, 77 N. W. 2d 332, 335 (1956); *In re Falls Tp. Trailer Ordinance*, 84 Pa. D. & C. 199 (1952); *County Board of Supervisors v. American Trailer Co.*, 193 Va. 72, 68 S. E. 2d 115 (1951); *Richards v. City of Pontiac*, 305 Mich. 667, 9 N. W. 2d 885 (1943), can be found to be undesirable in a large multi-use locale. The question presents itself squarely in the two conflicting opinions on the validity of a zoning ordinance excluding trailers from un-

developed communities, *Gust* v. *Tp. of Canton*, 342 Mich. 436, 70 N. W. 2d 772 (1955), and the instant case. In *Gust* the Supreme Court of Michigan decided that the planning for the future must have some reasonable basis in the facts available at the time that the municipality seeks to zone. The court distinguished *Zahn* v. *Bd. of Public Works of Los Angeles*, *supra*, as not compelling a different result. But the whole tenor of the decision below is that the municipality may speculate and zone on the basis of publicly expressed desires of the governing body regardless of the facts available at the time of said legislation, recognizing that the zoning regulations may be changed at a later time if necessary. The majority said, "If and when conditions change, alterations in zoning restrictions and pertinent legislative and judicial attitudes need not be long delayed" (Appendix B p. 20a). Are the constitutional rights of liberty and property to hinge on the ability of governmental officials to offer explanations for their continuing control over land use?

B. A further limitation on judicial application of the familiar standard of "reasonableness" is the oft stated principle that "debatable questions as to reasonableness are not for the courts, but for the legislature" *Goldblatt* v. *Town of Hempstead*, 369 U. S. 590, 82 S. Ct. 987, 8 L. ed. 2d 130 (1962).

However, as this court said in the case just cited,

> "To evaluate its reasonableness we therefore need to know such things as the nature of the menace against which it will protect, the availability and effectiveness of other less drastic protective steps and the loss which appellant's will suffer from the imposition of the ordinance." 369 U. S. at 595.

In the decision below, it is this inquiry which is notably missing. Although the majority opinion declares that "Trailer camps, because of their particular nature and relation to the public health, safety, morals and general welfare present a municipality with a host of problems and these problems persist wherever such camps are located" (Appendix B), it does little beyond concluding that: (a) "Clearly trailer camps bring problems of congestion with all their attendant difficulties"; the court does not seek to explain the difficulties or determine whether minimum space regulations would satisfy the congestion; and (b) the municipality "thought these trailer camps would strike a discordant note and be detrimental to property values, present and prospective, and retard the progress of the township" since a trailer camp is not "attractive in appearance"; it does not test this hypothesis by a search for supporting facts in evidence.

The "debatable issue" rule places limits on the courts power to act once a determination is made as to whether there is a reasonable basis for municipal action. A court must, however, make full inquiry into the facts and circumstances before it can reach that determination. If such inquiry discloses no such reasonable basis there is no debatable issue; the legislation must fall. To use the "debatable issue" rule to foreclose inquiry, as has been done in this case, clearly begs the question.

Since aesthetic factors were a major consideration in enacting the exclusionary ordinance, the ordinance violates the equal protection clause and due process clause in the 14th Amendment to the Constitution.

The last of the subjective elements given an enhanced status in Zoning by the decision below is aesthetics. The majority opinion on 3 separate occasions quoted testimony presented on behalf of the Township indicating that one

of the principle reasons offered by the municipality for enacting the exclusionary ordinance was aesthetics; trailers or mobile homes, "do not contribute anything to local scenery" (Appendix B p. 6a), are "not attractive in appearance". (Appendix B p. 6a) and "as a general run, are unsightly" (Appendix B p. 9a). There is raised a question as to what part these considerations may constitutionally play in Zoning and further, whether aesthetic considerations may generally sustain the regulation.

This court has never squarely ruled on this question although some state courts have accepted the dicta of *Berman v. Parker*, 348 U. S. 26, 75 S. Ct. 98, 99 L. ed. 27 (1954) as holding that aesthetic considerations alone may justify the exercise of the police power. *Maryland Holding Corp. v. Wieland*, 269 Wis. 262, 69 N. W. 2d 217 (1955). See, Report of Committee on Housing and Urban Renewal, Local Government Law Section of the American Bar Association, San Francisco, California, August, 1962. Aside from the impact of this opinion there has been considerable speculation about the ability of aesthetic factors to sustain Zoning regulations and some commentators observe a trend which indicates a break with the traditional view that aesthetic consideration could not sustain municipal action. Rose and Yim, *Aesthetics as a Zoning Consideration*, 13 Hastings L. Rev. 374, 378 (1962); Comment, Aesthetic Zoning: Preservation of Historic Areas, 29 Fordham L. Rev. 780 (1961). Thus there is clearly presented a substantial federal question as to whether state courts, and particularly the court below, may sustain Zoning enactments based principally on aesthetic considerations.

The issues presented in this appeal are nation wide in scope and have reached into the courts of a number of states.

Recent statistics show that over 10% of the new single family dwelling starts in the United States are trailers or mobile homes. Today, over 4 million people live in mobile homes, and there were an estimated 1½ million mobile homes in use as of August 15, 1961. There are more than 16,000 mobile home parks in the United States with approximately 550,000 spaces. In the year 1960, 144,000 trailers or mobile homes were produced and total sales amounted to $591,040,000.00. Mobile home residents include: 37% skilled workers; 20% military personnel; 18% professional people; 10% retired persons; 3% students; and 12% others such as businessmen, semi-skilled workers etc. The average size of the mobile home family is 2.9 persons, and the average income per family is $5,200.00.

"A mobile home is designed for stable, year-round living, and generally is placed on a semi-permanent foundation". New York Times, Section 8, Page 1, October 21, 1962, "The mobile home currently produced is an attractive completely furnished, efficiently spacious dwelling, for which national construction standards have been adopted and enforced by the manufacturer's association". Note: *Toward an Equitable and Workable Program of Mobile Home Taxation*, 71 Yale L. J. 702, 703 (1962). It contains all appliances, kitchen and sanitary facilities and costs between $3,500.00 and $12,000.00.

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[1] Compiled from Barr, *Mobile Homes and the General Housing Supply*, Nov. 28, 1961; *New York Times*, Section 8, Page 1, October 21, 1962; a survey of the *Mobile Home Consumer*, 1959, prepared by Michigan State University and published by Trailer Topics Magazine; and *Information Sheet—Mobile Homes and Travel Trailers*, August 15, 1961, prepared by Mobile Home Manufacturers Association, Chicago, Illinois.

Nevertheless, many municipalities in numerous states have attempted through the exercise of their police power to curtail or terminate the use of mobile homes as permanent places of abode by over-riding or ignoring regulatory ordinances designed to improve the standard of living in the mobile home. Some state courts have upheld statutes limiting the amount of time in which a trailer or mobile home could remain in the municipality to short intervals, thus making them strictly temporary abodes useful to tourists and effectually eliminating trailer parks. See *Spitler v. Town of Munster*, 214 Ind. 75, 14 N. E. 2d 579, 115 A. L. R. 1395 (1938); *Cady v. City of Detroit*, 289 Mich. 499, 286, N. W. 805 (1939); Appeal Dismissed 309 U. S. 620, 60 S. Ct. 470, 84 L. ed. 984 (1940); *Loose v. City of Battle Creek*, 309 Mich. 1, 14 N. W. 2d 554 (1944); *Stary v. City of Brooklyn*, 162 Ohio, St. 120, 121 N. E. 2d 113; Appeal Dismissed 348 U. S. 923, 75 Sup. Ct. 338, 99 L. ed. 724 (1954); *Gillam v. Board of Health of Saugus*, 327 Mass. 621, 100 N. E. 2d 687 (1951); *Town of Southport v. Ross*, 284 App. Div. 598, 132 N. Y. S. 2d 390 (1954); *Town of Hartland v. Jensen's Inc.*, 146 Conn. 697, 155 A. 2d 754 (1959). Other state courts have permitted municipalities to apply their building codes to trailers or mobile homes, in that manner effectually barring all mobile homes. See *People v. Gumaraol*, reported in National Institute of Municipal Law Officers, 4 Municipal Law Journal, p. 4, and American Municipal Association, the House Trailer, p. 32 (1937); *Lower Merion Tp. v. Gallup*, 158 Pa. Super. 572, 46 A. 2d 35 (1946); Appeal Dismissed 329 U. S. 669, 67 S. Ct. 92; *Commonwealth v. McLaughlin*, 168 Pa. Super. 442, 72 A. 2d 80 (Super. Ct. 1951); *Commonwealth v. Helmuth*, 73 Pa. D. & C. 350 (1949); *Kimsey v. City of Rome*, 84 Ga. App. 671, 67 S. E. 2d 206 (1951). Finally, in the instant case, the Supreme Court of New Jersey has become the second State Court of last resort to sanction a blanket prohibition of trailers or mobile homes from a municipality.

The first was Ohio. *Davis v. McPherson*, 132 N. E. 2d 284 (Ohio Ct. App. 1955), Appeals Dismissed 164 Ohio St. 375, 130 N. E. 2d 794, 164 Ohio St. 296, 130 N. E. 2d 342 (1955).

Mobile home prohibition by an exclusionary ordinance was previously invalidated as a violation of the 14th amendment to the Constitution in *Commonwealth v. Almost*, 44 Pa. D. & C. 125 (1941). It has also been held that an ordinance which totally excludes trailers or mobile homes from a rural and undeveloped municipality bears no relationship to the public health, safety and welfare. *Gust v. Twp. of Canton*, 342 Mich. 436, 70 N. W. 2d 772 (1955).

CONCLUSION

Appellant respectfully suggests that this appeal brings before this Court federal questions under the constitution that are far-reaching and important, both in terms of legal principles and of the practical impact upon mobile home dwellers, mobile home park operators and the mobile home park industry in general throughout the nation; and that enough has been said to demonstrate that the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Respectfully submitted.

MILFORD SALNY, ESQ.,
Counsel for Appellant.

[APPENDIX FOLLOWS]

APPENDIX A

Mandate on Reversal of the Supreme Court of New Jersey

This cause having been duly argued before this Court by Mr. William C. Gotshalk, counsel for the appellant and Mr. Milford Salny, counsel for the respondent, and the Court having considered the same,

It is hereupon ordered and adjudged that the judgment of the said Superior Court, Appellate Division is in all things reversed, set aside and for nothing holden, with costs; and it is further ordered that this mandate shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless otherwise ordered by this Court, and that the record and proceedings be remitted to the said Superior Court, Appellate Division to be there proceeded with in accordance with the rules and practice relating to that court, consistent with the opinion of this Court.

WITNESS the Honorable Joseph Weintraub, Chief Justice, at Trenton on the seventh day of May, 1962.

/s/ JOHN H. GILDEA, Clerk
Clerk of the Supreme Court

A True Copy
JOHN H. GILDEA, Clerk

FILED
May 7, 1962
JOHN H. GILDEA
Clerk

APPENDIX B

Majority Opinion of the Supreme Court of New Jersey

Argued December 5, 1961 Decided May 7, 1962

Mr. William C. Gotshalk argued the cause for the Defendant-Appellant. (*Mr. Vincent L. Gallaher*, Attorney.)

Mr. Milford Salny argued the cause for the Plaintiff-Respondent. (*Mr. Sidney D. Weiss*, on the Brief.)

The opinion of the court was delivered by

PROCTOR, J.

In this proceeding plaintiff Harold E. Vickers challenges the validity of an amendment to the zoning ordinance of the defendant Gloucester Township. This amendment prohibits "Keeping, locating establishing, maintaining, or operating a trailer camp trailer park * * * in its industrial district." After hearings, the Superior Court, Law Divi-

* The Definitions section of the amendment to the ordinance provide:

"442. TRAILER, TRAILER COACH OR CAMP-CAR. Any unit which is, or may be, used for living, sleeping, or business purposes by one or more persons and that is equipped with wheels or similar devices used for the purpose of transporting said unit from place to place, whether it be self propelled or otherwise, and whenever the word 'trailer' is used herein it shall mean and include 'trailer coach' and 'camp car'

443. TRAILER CAMP OR TRAILER PARK. Any [illegible] area, lot or tract of land which is so designed or intended for placing or locating thereon a trailer, trailer coach or camp-car, one or more, as above defined, other than a garage or other similarly enclosed type of building in which such vehicles may be placed."

sion, sustained the validity of the amendment. On plaintiff's appeal the Appellate Division reversed, 68 N. J. Super. 263 (1961). The Township appeals to this court under R.R. 1:2-1(a).

On July 1, 1957, the Township adopted a comprehensive zoning ordinance establishing Residence Districts "A," "B," "C," "D," a Business District, an Agricultural District and an Industrial District. The ordinance enumerated the uses permitted within all residence, business and agricultural districts, not mentioning trailer camps. The section regulating uses within the industrial district was drafted in different form; it permitted lands to be used and buildings to be erected for any lawful purpose with the exception of 41 specified uses. Trailer camps were not among the barred uses. By the terms of the ordinance dwellings which conformed to the requirements of the "A" residence district were permitted in the industrial district, provided prior approval of the Board of Adjustment was obtained. "A" residence district houses were required to be "One family detached dwellings" located on a lot not less than 75 by 125 feet with at least 880 square feet of usable first floor area.

On September 3, 1957, the Township adopted an ordinance entitled "An Ordinance to Regulate and Control Trailers, Trailer Coaches, Camp Cars and Trailer Camps in the Township of Gloucester." (Trailer Ordinance.) The effect of this ordinance and the zoning ordinance was to repeal a 1947 trailer ordinance barring trailer camps in the entire township and to ban such camps in the residence, business and agricultural districts, but permit them in the industrial district. At present there are no trailer camps in the Township.

In April 1959 this court decided *Napierkowski v. Township of Gloucester*, 29 N. J. 481, which concerned the va

lidity of the zoning ordinance as it applied to trailers in residential districts. We held "the provisions of the zoning ordinance prohibiting the location of trailers in residence districts * * * bears a reasonable relationship to the purposes of zoning as outlined in R.S. 40:55-32, and should be upheld." *Id.* at 496. We expressly left open the question of whether such uses could be completely excluded from the Township. *Id.* at 497.

On August 26, 1959, Vickers applied to the Township for a permit to operate a trailer camp upon his ten acres of industrially zoned land which he had purchased in November 1957. While this application was pending, he acquired ten additional acres of land across the road from his prior holdings but still within the industrial district. The Township Committee denied his application in a letter dated December 8, 1959. As a result, Vickers instituted an action in lieu of prerogative writ on December 30, 1959, wherein he alleged he had complied with the Trailer Ordinance requirements and sought a judgment compelling the Township to grant him permission to operate his proposed trailer camp. In their answer, the defendants stated that plaintiff's application was denied because his plans did not meet the requisite health standards and that the granting of the permit would be in violation of the zoning ordinance, sub-division ordinance and building code.

Much of the testimony introduced by the plaintiff at the trial of March 17, 1960, concerned his compliance with the requirements of the State Department of Health. Plaintiff also introduced evidence as to the characteristics of the Township, particularly the area surrounding his property. This area is almost entirely in the industrial district (an "A" residential district is not far from Vickers' lands) and is for the most part undeveloped. Several buildings ranging from dilapidated shacks to modest homes are situ-

ated in the immediate vicinity of plaintiff's property. There are no residential developments or industrial plants in this area, nor are there any between plaintiff's land and the Freeway which runs through the Township and is about two miles west of the property. An expert called by plaintiff testified that plaintiff's land could be appropriately used as a trailer camp site and that such use would not have an adverse economic effect upon the neighborhood.

Apparently realizing during the course of the trial that his application and plans did not meet the required standards of the State Department of Health, plaintiff moved for an opportunity to amend his application and plans as submitted. The court granted plaintiff's motion and further allowed the Township to "take such administrative action and review what action they may be desirous of taking in the interim time, which means that the Court will hold this issue in abeyance until such time as those mandatory actions are taken on the part of both parties." The trial was adjourned for an unspecified period.

The plaintiff's amended plans were submitted to the Township Committee at a meeting held on April 1, 1960. At that meeting the Mayor announced that a "proposed amendment to the Zoning Ordinance to exclude trailer camps is being submitted to the Planning Board for its consideration and comment at its next meeting, to be held April 5, 1960." After this announcement the Committee meeting was adjourned until April 5, 1960, "to take up any action regarding such proposed zoning ordinance amendment, and any other things that may be considered at the adjourned meeting." At the Township Committee meeting held April 5, 1960, the amending ordinance barring trailer camps from the industrial district and an ordinance repealing the Trailer Ordinance were read for the first time. The Township Planning Board met and approved

the amending ordinance on the same night. In a letter formally notifying the Township Committee of this action, the Planning Board stated:

> "The Board believes that trailer camps do not contribute anything to the general appearance of the local scenery and do not enhance the use or value of the local real estate and, in fact, do have a directly opposite effect, that the areas where they may exist are prejudiced thereby, that real estate values instead of being preserved or enhanced, would be depreciated, that the establishment of such camps would retard and, perhaps, choke the development of real estate for the area. To permit trailer camps and camp sites would not be in the interest of the general welfare of the community. The Board, therefore, registers its approval of the amendment . . . ."

This letter was read to the Township Committee at its next meeting which was held on April 22, 1960. At that meeting the zoning ordinance and the ordinance repealing the Trailer Ordinance were read for the second time and adopted by the Township Committee. The minutes disclose the following:

> "Mayor Yost, Mr. Harrison and Mr. McCann in reply to statements and questions raised by the members of the public, stated, in substance, that the Township Committee in presenting the ordinance to amend the zoning ordinance was taking into consideration the over all planning for the township, present and future, and that the purpose of the amendment was to protect property values, both present and future, which might be adversely affected by a trailer camp, because a trailer camp is not attractive in appearance and that

consideration must be given to the effect that such appearance would have on the development of the area in particular and the township in general.

Mayor Yost further pointed out that the township was in the heart of the Delaware Valley expansion that is taking place and that the township is growing fast and planning is necessary to cope with such growth."

Since the result of the ordinances was to prohibit trailer camps throughout the Township, plaintiff on May 5, 1960, filed a second complaint in lieu of prerogative writ demanding a judgment declaring the ordinances invalid and inapplicable to the use of his property as a trailer camp. In its answer the Township contended it had the power to enact the ordinances under its zoning powers and general police powers.

The second action came to trial on June 20, 1960, before the same judge who heard the first case, and the actions were consolidated. The parties stipulated that plaintiff's amended plans satisfied the prerequisite health standards applicable to trailer camps, thus leaving as the primary question whether the Township had the power to adopt the amendment prohibiting trailer camps from its industrial district, which in effect barred them from the entire township. Also in issue was the legal propriety of the procedure followed in adopting the amendment, the plaintiff contending the Planning Board did not have the opportunity to properly consider the amendment as required by N.J.S.A. 40:55-35.

The testimony, zoning map and photographs submitted at the trial showed that the Township is in the main a rural community of about 23 square miles in Camden County. However, the nature of the Township is rapidly changing, it being in the throes of expansion. The population has

grown from 7,950 in 1950 to about 17,500 in 1960, and the number of houses has increased from 2,694 in 1955 to 4,113 as of September 1959. The bulk of this expansion is concentrated in the nothern and western sections. The southern section, where plaintiff's lands are situated, includes several residential districts and a business district, but is for the most part relatively undeveloped. The Township's sanitary land-fill area, where non-garbage refuse is disposed and promptly covered by earth, is located about 100 yards from plaintiff's land. Although most of the southern section is in the industrial district, one-family houses can be constructed in that district if the Board of Adjustment gives permission. In fact, home developers have purchased 500 acres within the industrial district and adjacent to plaintiff's property. Mayor Yost and Mr. Moffa, Chairman of the Planning Board, stated the Township was continually considering changes in the existing zones in order to benefit the Township. The record and zoning map indicate that certain areas which had been previously zoned residential, have recently been reclassified industrial. There was also testimony that the Township, in an effort to eliminate blighted structures, had on February 8, 1960, appointed a Public Officer who is actively engaged in a program to rid the township of properties which are in "bad condition," including those located in the vicinity of plaintiff's land.

Mayor Yost testified that many factors motivated the Township to prohibit trailers. He said:

> "The Committee took many things into consideration; future over all planning of our Township; the acquisition of 500 acres of development ground bought by developers, adjacent to Mr. Vickers' property, also taking in connection with the Freeway, the other sections

of our Township are fairly well built up and the development is working further south.

* * *

"We feel that the trailers, as a general run, are unsightly, and couldn't see with present growth, also with the view in mind of future growth of planning where trailers would add to it."

The trial court, after noting the expanding nature of the community, held that the challenged ordinances were valid because "this is a municipality where prohibition of trailer camps can be legislated," and it further held the adoption of the amendment accorded with the statutory procedure. The Appellate Division reversed, holding "the amendment of the zoning ordinance of April 22, 1960 must be set aside as an unreasonable and arbitrary exercise of the zoning power." It said at 270:

"The entire picture presented very definitely gives the impression that the planned future of the township, as reflected by the high proportion industrial districts bear to the whole, does not contemplate that the township will become what is commonly called a 'residential town.' On the contrary it appears that the zoning power has been used in the hope of attracting industry.

* * *

"Surely, in this vast rural area, there must be some portion in which the operation of trailer parks would be compatible with the scheme of zoning the township has seen fit to select, and yet would not adversely affect existing or futures uses of property located anywhere in the township, and however zoned."

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The Appellate Division further held the Township was free to repeal its Trailer Ordinance and "its action in that regard will not be disturbed." In view of its disposition of the case, the Appellate Division found it unnecessary to pass upon the alleged procedural irregularity.

The parties agree the only issues on this appeal are: (1) In the circumstances, could the Township through its zoning power totally exclude trailer camps from the municipality? and, (2) Were the procedural requirements of N.J.S.A. 40:55-35 met in the adoption of the zoning ordinance amendment?

As to the first issue, the Township contends the zoning ordinance as amended represents a valid exercise of the municipality's power to "develop itself as an orderly and well integrated community," and that trailer camps with their accompanying disadvantages can only interfere with its planned growth. The plaintiff argues the Township, although it can regulate the operation of trailer camps, cannot absolutely prohibit them, that such an attempt is invalid since it "goes beyond the essential objects of zoning." He asserts "There is everything to indicate that Gloucester Township is not the type of community where the absolute prohibition of mobile home parks is warranted."

Our Constitution empowers the legislature to enact general laws under which municipalities may adopt zoning ordinances "limiting and restricting to specified districts and regulating therein buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land, and the exercise of such authority shall be deemed to be within the police power of the State." N. J. Const., Art. IV, Sec. VI, par. 2. And our Constitution commands that all laws con-

terning local government, and zoning laws are to that class, be construed liberally in favor of municipal power. N. J. Const., Art. IV, Sec. VII, par. 11.

In N.J.S.A. 40:55-30 and N.J.S.A. 40:55-31 the legislature has given municipalities extensive power to create districts and regulate structures and the use of land therein through zoning ordinances. The guiding purpose in exercising this power is set forth in N.J.S.A. 40:55-32 as:

> "Such regulations shall be in accordance with a comprehensive plan and designed for one or more of the following purposes: to lessen congestion in the streets; secure safety from fire, panic and other dangers; promote health, morals or the general welfare; provide adequate light and air; prevent the overcrowding of land or buildings; avoid undue concentration of population. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view of conserving the value of property and encouraging the most appropriate use of land throughout such municipality."

The role of the judiciary in reviewing zoning ordinances adopted pursuant to the statutory grant of power is narrow. The court cannot pass upon the wisdom or unwisdom of an ordinance, but may act only if the presumption in favor of the validity of the ordinance is overcome by an affirmative showing that it is unreasonable or arbitrary. *Kozesnik v. Township of Montgomery*, 24 N. J. 154, 167 (1957); see Cunningham, Control of Land Use in New Jersey, 14 *Rutgers L. Rev.* 37, 48 (1959). By these standards which control judicial review, the plaintiff to prevail must show beyond debate that the Township in adopting

the challenged amendment transgressed the standards of N.J.S.A. 40:55-32. In other words, if the amendment presented a debatable issue we cannot nullify the Township's decision that its welfare would be advanced by the action it took.

"It cannot be said that every municipality must provide for every use somewhere within its borders." *Fanale v. Borough of Hasbrouck Heights*, 26 N. J. 320, 325 (1958). The fact that a municipality is largely undeveloped does not impose a contrary obligation. Sound planning and zoning look beyond the present into what lies ahead in the hopes of the planners. "It requires as much official watchfulness to anticipate and prevent suburban blight as it does to eradicate city slums." *Lionshead Lake, Inc. v. Township of Wayne*, 10 N. J. 165, 173 (1952), appeal dismissed, 344 U. S. 919, 97 L. Ed. 708 (1953).

This court has considered several cases in which a municipality's zoning ordinance was attacked as unreasonable because it prohibited certain structures or uses.

In *Duffcon Concrete Products, Inc. v. Borough of Cresskill*, 1 N. J. 509 (1949) this court held a municipality could through its zoning ordinance permit light industry and totally exclude heavy industry.

In *Lionshead Lake, Inc. v. Township of Wayne, supra*, this court sustained a zoning ordinance provision barring the construction anywhere in the township (which included residential, business and industrial districts) of dwellings containing less than 768 square feet of living area. After alluding to health factors, the court said at 174:

> "But quite apart from these considerations of public health which cannot be overlooked, minimum floor-area standards are justified on the ground that they promote the general welfare of the community and, as we

have seen in *Schmidt v. Board of Adjustment of the City of Newark*, 9 N. J. 405 (1952), *supra*, the courts in conformance with the constitutional provisions and the statutes hereinbefore cited take a broad view of what constitutes general welfare. The size of the dwellings in any community inevitably affects the character of the community and does much to determine whether or not it is a desirable place in which to live."

In *Fischer v. Township of Bedminster*, 11 N. J. 194 (1952) this court upheld a zoning ordinance which placed most of the township in a residence zone with a minimum lot size of five acres for each residence. The court said at 204: "As much foresight is now required to preserve the countryside for its best use as has been needed to save what could be salvaged of our cities."

In *Pierro v. Baxendale*, 20 N. J. 17 (1955), this court sustained a zoning ordinance barring motels from a municipality which included residential, business and industrial districts. In so doing, we reiterated the proposition that "general welfare" is a broad concept and noted that it includes "public convenience" and "general prosperity."

In *Fanale v. Borough of Hasbrouck Heights*, *supra*, the validity of the zoning ordinance prohibiting the construction of apartment houses anywhere in the borough was under attack. The borough was zoned for residence, business and industry. The plaintiff sought to construct an apartment house in the business district on a lot which contained a dilapidated residence. The plaintiff contended *inter alia* the ordinance was invalid because one and two-family houses were permitted in the industrial zone, while apartment house were excluded. In sustaining the ordinance, we said at 328:

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> "True, as the ordinance now stands, one and two-family homes may be erected in those districts. Nonetheless, and apart from the unlikelihood of that development, a multi-family structure in an industrial setting would grossly accentuate the resulting problems. The matter is one of classification, and we cannot say a distinction between one and two-family houses as against multi-family ones even in industrial districts is devoid of reasonable factual support."

In *Napierkowski v. Township of Gloucester, supra*, the provisions of this Township's zoning ordinance which prohibited trailers and trailer parks from the residential, business and agricultural districts were under attack. The plaintiff wanted to place a trailer on her four acre tract for use as her permanent residence. Although the land was situated in a residential zone, the area about her plot was mainly rural and was likely to remain so for the reasonably foreseeable future. After noting that: (1) some states have upheld regulations limiting the time during which a trailer could remain in a municipality to short intervals thus making them strictly temporary abodes and effectively eliminating trailer parks which cater to trailers used as permanent residences; (2) other states have permitted municipalities to apply their house building codes to trailers, thus effectively barring all trailers since none could possibly comply; and (3) some states have permitted the unequivocal prohibition of trailers throughout the municipality, we said at 493:

> "The decisions elsewhere highlight the fact that the use of trailers as permanent residences present problems which are oftimes inimical to the general welfare * * * And from the point of view of aesthetic con-

> siderations (which are inextricably intertwined with conservation of the value of property) trailers may mar the local landscape."

We concluded that the Township of Gloucester had the power to prohibit trailers from all residential districts, even though those districts include rural areas which will remain undeveloped for the reasonably foreseeable future. We said at 494: "Zoning must subserve the long-range needs of the future as well as the immediate needs of the present and the reasonably foreseeable future. It is, in short an implementing tool of sound planning."

It is necessary to look at the total picture to determine whether the Township's ordinance violated the statutory zoning standards in the light of the above decisions. As in all zoning cases, the question is whether the requirements of the ordinance are reasonable under the circumstances. *Fanale v. Borough of Hasbrouck Heights, supra* at 325.

It is clear the tide of suburban development has begun to engulf the rustic character of the Township. Its population has more than doubled in the past ten years with a corresponding increase in the number of homes. There is every indication this markedly accelerated growth will continue; housing developers have acquired large tracts of land in the sparsely settled areas. While the record does not show any significant industrial development, the new Freeway and the Walt Whitman Bridge have recently opened up this particular section of south Jersey to the business and shipping centers of Philadelphia and Camden, and to the industrial and commercial areas along the Delaware River. See *Napierkowski v. Township of Gloucester, supra* at 494. It is not unreasonable to anticipate that industry, creating new ratables which will help allay local tax problems, may be encouraged by sound planning and

zoning to look favorably to this area for plant sites. Indeed, unless there is such planning and zoning, the municipality may suffer from the adverse effects of helter-skelter and deleterious property uses, thus discouraging industry from settling in the Township. Industry may shun the disharmony resulting from discordant uses side by side.

Choosing to take advantage of the community benefits which can flow from thoughtful planning, the Township in 1957 adopted its first comprehensive zoning ordinance and recognized the difference between modern industrial development and unrestricted factory constructions. The ordinance excludes from the industrial district 41 nuisance type industries which were determined to be unsuitable to the kind of community planned. As to the permitted structures, there are restrictions as to lot size, percentage of area occupied by buildings, height of buildings and setbacks, and requirements for off-street parking and loading facilities. These provisions are in harmony with modern concepts of industrial planning which aim to promote an attractive industrial area, compatible in appearance with nearby residences. Much of the current industrial development in this state is in fact taking place in areas resembling parks where nuisance type plants are excluded and attractive architecture prevails. Such types of industry often lend to the prosperity of the entire municipality.

Trailer camps, because of their particular nature and relation to the public health, safety, morals and general welfare, present a municipality with a host of problems, and these problems persist wherever such camps are located. *See Zuller v. Board of Health, Woodbridge Tp.*, 9 N. J. 471 (1952); *Residential Transition of House Trailers*, 22 U. Chi. L. Rev. 708, 709 (1955); *Trailer Parks v. The Municipal Police Power*, 24 Conn. B. J. 295 (1950); *Regulation of Mobile Homes*, 13 Syracuse L. Rev. 125 (1961). In

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Fanale v. Borough of Hasbrouck Heights, supra, we said at 325: "Apartment houses are not inherently benign. On the contrary, they present problems of congestion and may have a deleterious impact upon other uses." This description is equally applicable to trailer camps. Clearly trailer camps bring problems of congestion with all their attendant difficulties. In the present case the plaintiff proposes to place each trailer on a 40 by 60 foot lot. The smallest lot upon which a one-family dwelling (the only type permitted in the zone) can be erected in the same zone is 75 by 125 feet. Therefore, in the same square area the Township would have to cope with nearly four times as many trailer families and motor vehicles as would be present if the tract were devoted to one-family houses. As we recognized in *Fanale* at 328, a town may properly conclude that, because of the gross difference in the resulting problems, it will permit in its industrial zone the types of residences which do not foster congestion while excluding those which bring with them heavy concentration of population.

And if the Township is to avoid the "deleterious impact" which one use may have upon other uses and encourage "the most appropriate use of land throughout such municipality," it must be concerned with the future as well as the present values of property. Our recent decisions have consistently held, in conformance with the constitutional provisions and the zoning statutes hereinbefore cited, that "general welfare" should be given a broad interpretation. *Pierro v. Baxendale, supra; Fischer v. The Township of Bedminster, supra; Inland Lake, Inc. v. Township of Wayne, supra.* If the zoning ordinance is reasonably calculated to advance the community as a social, economic and political unit, it furthers the general welfare and therefore is a proper exercise of the zoning power. *Schmidt v. Board of Adjustment of the City of Newark*, 9 N. J. 405 (1952).

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In the present case the Township is seeking to create an attractive industrial zone. The purpose of the zoning ordinance is to guide the Township in its transition from a *laissez-faire* growth to a well-ordered community. The zoning ordinance does not presently envision exclusively industrial districts since it permits dwellings to be erected in those areas. However, these houses can only be one-family detached dwellings on a lot not less than 75 by 125 feet. The governing body determined that such houses would be compatible with industrial uses. It thought that trailer camps would strike a discordant note and be detrimental to property values, present and prospective, and retard the progress of the Township. The governing body stated "a trailer camp is not attractive in appearance" and considered this factor in reaching their conclusion. Aesthetics may properly be considered in establishing a zoning scheme "with a view of conserving the value of property and encouraging the most appropriate use of land." *See Napierkowski v. Township of Gloucester, supra* at 494; *Pierro v. Baxendale, supra* at 28; *Point Pleasant Beach v. Point Pleasant Pavilion*, 2 N. J. Super. 222, 225 (App. Div. 1949).

The Township has begun to feel the effects of its potential for extensive and rapid development, and has concluded that the presence of trailer camps would hamper this potential. It believes that the prohibition of trailer camps is in keeping with the orderly growth of the Township and best serves the interests of the entire municipality in its development as a desirable place in which to work and live. Since as this court has held, municipalities can properly determine that the construction of small houses, *Lionshead Lake*, apartment houses, *Fanale*, and motels, *Pierro*, may have an adverse effect upon other properties throughout those municipalities (including industrial districts), and that living

units which produce congestion can be excluded, we would be flying in the face of the broad powers granted to municipalities by the Constitution and zoning statutes as interpreted by our decisions if we held that the Township in the present case must, against the will of its governing body, allow the construction and operation of trailer camps in its industrial district. Accordingly, we hold the plaintiff has failed to show the Township acted unreasonably in amending its zoning ordinance to exclude trailer camps from its industrial district.

Since trailer camps are not permitted in the other districts, the effect of the amending ordinance prohibiting them in the industrial district is to bar them from the entire municipality. There are no trailer camps in the Township at present. Plaintiff contends that total prohibition is illegal. However, we have held that a municipality need not provide a place for every use. *Fanale v. Borough of Hasbrouck Heights, supra.* We do not think that a municipality must open its borders to a use which it reasonably believes should be excluded as repugnant to its planning scheme. It must be remember that once a use is legally established, even though conditions impel a revision of the zoning ordinance and the use strikes a jarring note, it cannot be eliminated by such a revision under existing law, See N.J.S.A. 40:55-48. If through foresight a municipality is able to anticipate the adverse effects of particular uses and its resulting actions are reasonable, it should be permitted to develop without the burdens of such uses. In his inaugural address on January 16, 1962, Governor Hughes recognized the need for a "planned development" of communities. He said:

> "[A] balanced distribution of people, jobs and industries between our urban and suburban communities is essential for the revitalization of urban life *and the*

> *orderly growth of suburban* areas. We cannot stand by while the bright face of New Jersey is disfigured by decay of its cities *and a haphazard growth of its suburbs.*" (Italics supplied.)

Our conclusion that the Township had the authority to adopt the amendment is based upon the facts presented, the circumstances of the Township today and its projected development. We have noted that the Township is in a state of flux. Its ultimate character remains indeterminate. In fact, there have been several amendments to the zoning ordinance since its enactment in 1957 and the testimony indicates more are contemplated. We are not unmindful of the reported improvements in design and rising popularity of trailers and the accompanying increased need for trailer camps. *Moss, Zoning for Mobile Homes, Journal of American Institute of Planners*, 204 (1961); *McKeever, The Motionless Mobile Home*, 19 Urban Land 1 (April 1960); *Bartlett, Mobile Home Parks and Comprehensive Community Planning*, p. 3 (1960); *Hodes and Robertson, The Law of Mobile Homes*, p. 3 (1957); *Note, Toward an Equitable and Workable Program of Mobile Home Taxation*, 71 Yale L.J. 702 (1962). It may be that circumstances will change and trailers and trailer camps will be an appropriate use in some areas of the Township. If at that time the provisions of the ordinance become unreasonable they may be set aside. As we said in *Pierfo v. Barnitale*, *supra* at 29, "If and when conditions change, alterations in zoning restrictions and pertinent legislative and judicial attitudes need not be long delayed."

It is of no significance that plaintiff's proposed trailer camp would not be detrimental to his immediate neighborhood as it now exists. The validity of a zoning ordinance is not to be determined by reference to an individual parcel

of land. *Fischer v. Township of Bedminster, supra* at 295. Moreover, the Township has embarked upon an active program designed to eliminate the blighted structures which are near plaintiff's property. We repeat what we said in *Napierkowski v. Township of Gloucester, supra,* at 494: "Zoning must subserve the long-range needs of the future as well as the immediate needs of the present and the reasonably foreseeable future." The Township officials have a basis to expect plaintiff's neighborhood will not remain in its present run-down condition and they are justified in considering the envisioned betterment.

The only decision of an appellate court cited by the plaintiff to sustain his contention that total prohibition of trailer camps in a municipality is beyond the zoning power is *Gust v. Township of Canton,* 342 Mich. 436, 70 N.W. 2d 772 (1955). There the court said, "The test of validiy is not whether the prohibition may *at some time in the future* bear a real and substantial relationship to the public health, safety, morals or general welfare, but whether it does so *now.*" (Italics supplied.) 70 N.W. 2d 774, 775. This view is contrary to our concept of zoning which requires a looking beyond an immediate "now." *Napierkowski v. Township of Gloucester, supra* at 494. Therefore, we are not persuaded by a result based on the philosophy of the court in *Gust.*

Plaintiff further contends that even if the Township could exclude trailer camps, the adopted amendment is void because the Planning Board did not have the opportunity to give proper consideration to the matter as required by N.J.S.A. 40:55-35.

The amendment was introduced by a first reading at the Township Committee meeting on April 5, 1960. Shortly thereafter, a recess was called to enable the Committeemen who were also members of the Planning Board to at-

tend the Board meeting being held in the same building. After a 45 minute recess the Committee meeting reconvened and it was orally reported that the Planning Board had approved the amendment during that period. This approval was formally communicated to the Committee in a letter dated April 5, 1960, and read at its April 22, 1960, meeting before final adoption of the amendment.

The Chairman of the Planning Board had received a copy of the proposed amendment on April 3, 1960. He discussed the matter informally with several members prior to the meeting of April 5, 1960. The exclusion of trailers and trailer camps had been a subject of frequent discussion prior to the *Napierkowski* decision in 1959, and even more so since then, but this specific amendment was considered formally by the Planning Board for only 45 minutes.

The plaintiff asserts the action of the Planning Board violated the essential principle of N.J.S.A. 40:55-35 because the Board did not take a reasonable time to consider the specific amendment, and that it was in effect "a mere rubber stamp."

N.J.S.A. 40:55-35 prescribes the procedure for amending a zoning ordinance. It provides in pertinent part:

> "[N]o amendment or change shall become effective unless the ordinance proposing such amendment or change shall first have been submitted to the planning board, when such board exists, for approval, disapproval or suggestion, and the planning board shall have a reasonable time, not less than thirty days, for consideration and report * * *".

The policy of the above provision is to afford the Planning Board a reasonable time, not less than 30 days, to perform its statutory function. However, it may act in less time and if it does, the statutory prerequisite is met.

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Wollen v. Fort Lee, 27 N. J. 408, 417 (1958). The statute does not specify a minimum period of time during which the Board must consider the amendment. The reasonableness of the time allotted depends on the facts in each case. The amendment in the present case was not a long and complicated document couched in ambiguous language. On the contrary, it was short and easily understood. The subject matter was discussed by the Board "from time to time" prior to the approval of the specific amendment. In view of the circumstances here, we cannot say the action of the Board did not represent its considered judgment arrived at independently. It could have reasonably concluded it was as prepared to pass upon the amendment on April 5 as it would be at some later time.

In light of the above, we hold that the Township zoning ordinance amendment barring trailer camps from its industrial district was a valid exercise of its zoning power and was adopted in conformity with the statutory requirements.

The judgment of the Appellate Division is reversed and the judgment of the Law Division is reinstated.

APPENDIX C

Dissenting Opinion of the Supreme Court of New Jersey

HALL, J. (dissenting)

The majority decides that this particular municipality may constitutionally say, through exercise of the zoning power, that its residents may not live in trailers—or in mobile homes, to use a more descriptive term. I am convinced such a conclusion in this case is manifestly wrong. Of even greater concern is the judicial process by which it is reached and the breadth of the rationale. The import of the holding gives almost boundless freedom to developing municipalities to erect exclusionary walls on their boundaries, according to local whim or selfish desire, and to use the zoning power for aims beyond its legitimate purposes. Prohibition of mobile home parks, although an important issue in itself, becomes, in this larger aspect, somewhat a symbol.

The instant case, both in its physical setting and in the issues raised, is typical of land use controversies now current in so many New Jersey municipalities on the outer ring of the built up urban and suburban areas. These are municipalities with relatively few people and a lot of open space, but in the throes, or soon to be reached by the inevitable tide, of industrial and commercial decentralization and mass population migration from the already densely settled central cores. They are not small, homogeneous communities with permanent character already established, like the settled suburbs surrounding the cities in which planning and zoning may properly be geared around things as they are and as they will pretty much continue to be. On the contrary these areas are sprawling, heterogeneous governmental units, mostly townships, each really amounting to a region of considerable size in itself.

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Their present rural, semi-rural or mixed nature is about to change substantially and they are soon to become melded into the whole metropolitan area. Their political boundaries are artificial and hence of relatively little significance beyond defining one unit of local government. Their existing conglomeration of land uses are sectionally distributed—large or small scale agriculture, residences in separated communities and on good sized plots or acreage in the open country, business establishments in the populated sectors and along through highways, and perhaps a spot or two of industry much sought after to aid municipal tax revenues. Many differing land uses, both present and future, are and can be made comfortably compatible by reason of the distances involved and the varying characteristics of geographical sections. Present municipal services are not more extensive than necessary to serve a population scattered over a large territory. Increased facilities, especially schools, required to accommodate a sudden population growth of large proportions must be provided almost solely at local expense, which in New Jersey means from additional taxation on real estate within the municipal boundaries. And it is elementary knowledge that small homes with children to be educated in local schools cannot pay their own way tax-wise.

Such municipalities, above all others, vitally need and may legally exercise comprehensive planning and implementing zoning techniques to avoid present haphazard development which can only bring future grief. They are entitled to aim thereby for a sound and balanced area, with varying uses confined to specified districts and appropriately regulated. They may even limit the pace of growth to coincide with the availability of the necessary additional facilities and services so as to minimize growing pains. *See Fasing, Regulating the Timing of Urban Development*, 20

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Law and Contemporary Problems 26 (1960). They do not have to permit an Oklahoma land rush or a Western boom town. They need not allow every land use wherever someone wants to put it on the property is suitable and, in accordance with a comprehensive plan, may reasonably restrict districts to a particular future use even though another use would be equally suitable. They would be well advised to plan with adjoining communities, especially for joint public services and facilities. Inter-community planning is also best able to accommodate those categories of uses that ought not be excluded everywhere, but which may be more desirably located in one municipality rather than another. Unfortunately, our statutory provisions for voluntary regional planning boards, R.S. 40:27:6 to 11, have been little used, if at all.

And this gets to the nub of what this, and similar cases, are really all about, *i.e.*, the outer limit of the zoning power to be enjoyed by these municipalities most in need of comprehensive authority. What actions are legitimately encompassed by that power and what is the proper role of courts in reviewing its exercise?

The inquiry involves important fundamentals. In the broad sense the considerations are well posed in Williams, *Planning Law and Democratic Living*, 20 Law and Contemporary Problems 317 (1955):

> "The main premises of American constitutional law represent a codification and institutionalization of the primary values of a democratic society—equality of opportunity and equality of treatment, freedom of thought and considerable freedom of action, and fairness. Under the American system, a more or less independent mechanism of judicial review is established to provide an independent check on whether specific governmental decisions conform to these standards.

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While controversy has often raged about judicial action in other areas, it has always been recognized that it is an essential part of the judicial function to watch over the powerful and enlightened attitudes and policies of local government, and to see to it that these do not run counter to national policy and the general welfare.

Constitutional law should serve to shed light upon thinking about local planning, by requiring those concerned to do what they should be doing anyway—to work out the relationship between planning the future environment and the great issues connected with human freedom and opportunity.

* * *

An intelligent application of constitutional law to the measures used in planning the environment will therefore force a searching inquiry into basic problems and thus become in fact an excellent vehicle for getting at what is really involved in planning decisions. If such searching inquiries are to be undertaken, this means that no major problem in planning law can really be understood except by an analysis thereof in relation to the whole background of the changing physical, economic and social environment. In short, what is needed in planning law is a 'super-Brandeis brief' approach.

* * *

The leaders of liberal democratic thought are all too often so confused with abstractions ('health, safety, morals and welfare,' 'character of the neighborhood,' etc.), so full of respect for local autonomy, and so fearful of judicial review generally, as to be unable to understand the implications of what is going on. It has not been generally realized that in many instances the problems arising in this field of constitutional law are

closely akin to those involved in civil liberties law, and call for similar attitudes toward the exercise of governmental power." (emphasis supplied). (at pp. 318, 319, 349-350).

Looking first at the judicial role in such matters, it may well be suggested there is nothing revolutionary or even novel in the majority's approach, the formulation of the decision or even in what is said. True it is that the opinion flows smoothly, beginning with common principles and presumptions of constitutional and statutory validity, continuing through recital of a succession of prior decisions in this court, to the seemingly irresistible conclusion that the local action is beyond successful attack. But as I see it, the result of this judicial process goes so far off the mark here as to point up in bold relief the necessity to pause for reappraisal of some of what has gone before and at least to halt what I think has developed into a most improper trend.

The decision formula runs as follows: the 1947 Constitution requires that zoning enabling laws be construed liberally in favor of municipal power. Any local exercise of that power is presumed valid until overcome by an affirmative showing of unreasonableness. Judicial review is so narrow that this showing can never be made if even a "debatable issue" exists. Such an issue exists in this case. Therefore, the local prohibition stands.

The majority's spelling out of the "debatable issue" falls into this syllogistic pattern: Developing municipalities need not provide for every use. Cited precedent supports the local right to exclude uses on broad grounds. Planning and zoning in growing municipalities must look ahead to anticipate and prevent blight and to provide for "the hopes of the planners." Any zoning ordinance provi-

sion by such a municipality is proper if only it furthers the "general welfare" of the particular municipality in isolation. It does so if, in the single view of a majority of the local governing body, it "is reasonably calculated to advance the community as a social, economic and political unit" or aids in making the community a desirable place in which to work and live. Trailer camps present problems, are unattractive in appearance ("aesthetics may properly be considered in establishing a zoning scheme"), and may be detrimental to present and prospective property values, thereby retarding the "progress" of a municipality. Moreover, once allowed to exist, they become irremovable non-conforming uses with a permanent jarring note if future conditions impel zoning revision. Factually, since validity must be considered in the light of the particular circumstances, this township is in the path of growth potential and is presently in a state of flux. It is seeking the orderly development of a well integrated community. Its officials do not like the looks of trailer camps in industrial districts or anywhere else; they "are unsightly" and "do not contribute anything to the general appearance of the local scenery and do not enhance the use or value of the local real estate." Therefore their complete prohibition furthers the "general welfare" in the eyes of the local authorities. The court cannot go against their view.

As the first stone in building its thesis, the majority relies on the 1947 constitutional mandate, Art. IV, Sec. VII, par. 11, enjoining liberal construction of provisions in that document and of laws concerning local government. Analysis demonstrates that the mandate has no true application in this situation. It was intended to reverse the former rule of construction of municipal power which had required, as stated for example in *N. J. Good Humor, Inc.* v. *Bradley Beach*, 124 N. J. L. 162, 164-165 (E. & A. 1939), that

"[a]ny reasonable or fair doubt of the existence of the asserted power, or any ambiguity in the statute whence it springs, or those in *pari materia*, is to be resolved against the municipality, and the power is denied. Municipalities are to be confined within the limits that a strict construction of the grants of power will assign to them."

See 1 *Proceedings of the New Jersey Constitutional Convention of 1947* 401. But municipalities are still governmental units carrying out only those state functions and duties delegated to them by the legislature either expressly, by necessary or fair implication, or as incidental or essential to powers expressly conferred. The new constitutional provision did not create a new concept of limitless home rule or give omnipotence to a local government to do anything it desires without regard to the limits of the delegated power supposedly exercised. *Magnolia Development Co., Inc. v. Cedar*, 16 N. J. 223 (1954); *Ford v. Mayor and Council of Tappan Borough*, 16 N. J. 515, 518 (1954); *Grogan v. DeSapio*, 11 N. J. 308, 316-317 (1953); *Wagner v. Newark*, 24 N. J. 467, 476-478 (1957).

In land use regulation, the legislature has specifically defined and delineated the objects and methods of municipal action in accordance with expressed standards. Liberal construction cannot be applied in such matters so as to "constitute an authorization for a municipality to exercise the powers therein conferred without compliance with the provisions and procedures therein described," many of which are for the protection of property owners. *Magnolia Development Co., Inc. v. Cedar*, *supra* (16 N. J. at 227), nor does it, speaking more generally, "connote an extension of the boundaries delineated by the statutory phraseology as commonly used". *Grogan v. DeSapio*, *supra* (11 N. J. at

:316). We are not here concerned with the physical scope of the zoning power, cf. *United Advertising Corp.* v. *Borough of Raritan*, 11 N. J. 144, 150 (1952), but rather with the propriety of its exercise in the light of the prescribed statutory scheme and standards and other inherent limitations. It is a misapplication of the constitutional mandate to utilize it, as the majority seems to do, for the purpose of glossing over or watering down the requisite inquiry as to reasonableness with reference to the particular action under review.

The other foundation stones of the majority's approach are the twin shibboleths of presumption of validity of municipal action and restraint on judicial review if the proofs do not overcome it "beyond debate." The trouble is not with the principles—if we did not have them, governments could not well operate at all—but rather with the perfunctory manner in which they have come to be applied. Undoubtedly influenced at the same time by loose application of the constitutional provision for liberal construction, *Lomarch Land & Dev. Inc.* v. *Township of Wayne*, 10 N. J. 165, 172 (1952), appeal dismissed, 344 U. S. 919, 97 L. ed. 708, 73 S. Ct. 380 (1953), our courts have in recent years made it virtually impossible for municipal zoning regulations to be successfully attacked. Judicial scrutiny has become too superficial and one-sided. The state of the trend is exemplified in the language of the majority that "if the amendment presented a debatable issue we cannot nullify the

[illegible] the subject, writing in the fall of 1959, finds that since liberality of application of the principle was stated so strongly in *Kirsch* v. *Montgomery Township*, 24 N. J. 154, 167 (1957), this court has sustained the challenged ordinance in every case but one. Cunningham, Control of Land Use in New Jersey by Means of Zoning, 14 *Rutgers L. Rev.* 37, 48. And the record has not changed substantially since.

Township's decision that its welfare would be advanced by the action it took."

In passing, a further principle may be noticed which seems to have been lost sight of in recent zoning decisions: "* * * the presumption of validity * * * is only a presumption and may be overcome or rebutted not only by clear evidence *aliunde*, but also by a showing on its face or in the light of facts of which judicial notice may be taken, of transgression of constitutional limitation or the bounds of reason." *Mount v. Paramus*, 30 N. J. 528, 535 (1959). Accordingly, it seems only fair to private citizens seeking judicial determination of their rights to require the municipality, with all its resources, to assume the burden of going forward to justify its action when the challenged measure gives good possibility on the surface of going to a doubtful extreme.

While it has long been conventional for courts to test the validity of local legislation by the criterion of whether a fairly debatable issue is presented, and if so to sustain it, it makes all the difference in the world how a court deals with that criterion. Proper judicial review to me can be nothing less than an objective, realistic consideration of

The instant case is a good example. At the inception, plaintiff, a single small property owner, was seeking authority, on any possible basis, to use his particular land for a mobile home park, a then permissible use. The prohibitory ordinance amendment adopted in the middle of the litigation shifted the issue to the comprehensive one with which this dissent is concerned. His proofs—and the township's too, for that matter—are sparse on the meaningful aspects of the ultimate controversy. Undoubtedly he was without the facilities or financial means to marshal and present the many sided evidence needed to make a telling attack and even come close to meeting the heavy burden the majority imposes upon him and others similarly situated.

the setting—the evils or conditions sought to be remedied, a full and comparative appraisal of the public interest involved and the private rights affected, both from the local and broader aspects, and a thorough weighing of all factors, with government entitled to win if the scales are at least balanced or even a little less so. Of course, such a process involves judgment and the measurement can never be mathematically exact. But that is what judges are for—to evaluate and protect all interests, including those of individuals and minorities, regardless of personal likes or views of wisdom, and not merely to rubber stamp governmental action in a kind of judicial *laissez-faire*. The majority approach attaches exclusive significance to the view of the governing body that, in its summary opinion, the "welfare" of the municipality would be advanced. On this criterion it is hard to conceive of any local action which would not come within the "debatable" class.

The majority falls in line with a plainer expression of the same thought in two earlier cases upon which it relies—*Lionshead Lake, Inc.* v. *Township of Wayne*, *supra* (10 N. J. 165, concurring opinion) and *Pierro* v. *Baxendale*, 20 N. J. 17 (1955). In the latter the court said: "We are satisfied that at long last conscientious municipal officials have been sufficiently empowered to adopt reasonable zoning measures designed towards preserving the wholesome and attractive characteristics of their communities and the values of taxpayers' properties." (20 N. J. at 29). In the former: "[The attacked provision] constituted important legislative action representing the governing body's best judgment as to what zoning restrictions were required to promote the health, morals and general welfare of the community as a whole. Decent respect for its problems and sincerity required that its action remain unimpaired in the absence of clear showing that it was arbitrary, unreason-

able, or beyond the authority of the general Zoning Act." (10 N. J. at 179). I think it is basically wrong for a court to take this point of view. Municipal legislative action is always assumed to have been taken conscientiously, sincerely and honestly. The test of validity is certainly something much more than bad faith or corruption. Local officials, no matter how conscientious and sincere in their own minds, may be legally wrong in formulating into legislation what they think is best for their community. The only place that question can be tested and individual rights and privileges safeguarded is in the courts. The judicial branch does not meet its full responsibility when, as here, its concept of review gives unquestioning deference to the views of local officials.

Turning to the way the majority looks at local zoning regulations from the substantive standpoint, it is asserted to be enough, as has been indicated, that the "general welfare" of the community is advanced. And the definition of the term, taken from prior cases, is so broad—anything "reasonably calculated to advance the community as a social, economic and political unit", including "public convenience" and "general prosperity"—one could hardly conceive of any land use regulation which would not fulfill it, especially when the governing body's determination is so controlling. All the other purposes and criteria of valid zoning set forth in the enabling act, R.S. 40:55-32, seem to be written out as unnecessary and of no bearing. The result is an explosion of local control in directions and for purposes, under the guise of zoning, which go beyond the legitimate aims of the power. We should not forget some fundamentals. Zoning is land use control by *physical* planning to bring about physical results for public, not private, welfare. It is not a device to be used to accomplish any and all purportedly desirable *social* results unrelated to the

statutorily stated purposes. The basic definition by the first authority in the field still holds good: "Zoning is the regulation by districts under the police power of the height, bulk and use of buildings, the use of land and the density of population." Bassett, *Zoning* 45 (1940). The purpose "to promote * * * the general welfare" does not stand alone in the statute. Its meaning and scope must have some relation to the other specified standards and the whole authorized scheme. Certainly "general welfare" does not automatically mean whatever the municipality says it does, regardless of who is hurt and how much.

And no matter how broadly the concept is viewed, it cannot authorize a municipality to erect a completely isolationist wall on its boundaries. This was early recognized in the foundation case of *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365, 71 L. ed. 303, 47 S. Ct. 114 (1926), where the court was careful to say: "It is not meant by this, however, to exclude the possibility of cases where the general public interest would so far outweigh the interest of the municipality that the municipality would not be allowed to stand in the way." 71 L. ed. at 311. Two of our own landmark decisions (one wonders what has lately happened to them) made it very plain, even though our zoning scheme is legislatively keyed to municipal lines, that validity of local use prohibitions is to be judged by, among other things, availability of other appropriate locations, *Duffcon Concrete Products, Inc.* v. *Borough of Cresskill*, 1 N. J. 509 (1949), and that one town's zoning should give due recognition to conditions across its boundaries, *Borough of Cresskill* v. *Borough of Dumont*, 15 N. J. 238 (1954). See *Haar, Regionalism and Realism in Land-Use Planning*, 105 U. Pa. L. Rev. 515 (1957); *Note, Zoning Against the Public Welfare: Judicial Limitations on Municipal Parochialism*, 71 Yale L. J. 720 (1962). Though the *Cresskill* cases dealt

with built-up suburbs, their underlying philosophy is equally applicable to developing municipalities in a vast metropolitan complex. They stand for the proposition that "general welfare" transcends the artificial limits of political subdivisions and cannot embrace merely narrow local desires.

I have at least equal difficulty with the breadth of another major aspect of the majority's thesis—that the local power to zone is especially *carte blanche* when the municipality is a relatively virgin one, and in the path of metropolitan expansion. The specter of future blight and a present inward vision of what the municipality hopes or dreams of someday becoming or remaining seem enough to sanction most any restriction, however drastic or provincial. This is, of course, partly true, since such municipalities may validly exercise comprehensive planning and zoning powers in many ways to meet their peculiar problems, present and prospective. Reasonableness depends on particular circumstances and some of the techniques legitimately available to them might be invalid if applied to relatively small built up municipalities with settled character. But the reverse is also true. *Euclid* long ago noted: "A regulatory zoning ordinance, which would be clearly valid as applied to the great cities, might be clearly invalid as applied to rural municipalities." 71 L. ed. at 340. Some of the cases relied on by the majority—*Duffcon Concrete Products, Inc.* v. *Borough of Cresskill, supra* (1 N. J. 509), (a densely settled suburb may properly exclude industry, if it has some other place to go in the general area); *Fanale* v. *Borough of Hasbrouck Heights*, 26 N. J. 320 (1958), (such a community may say it has had enough of some problem-creating method of living); *Pierro* v. *Baxendale, supra* (20 N. J. 17), (it may keep transient motels at least out of its residential districts even though it allows dwellings to be

used for boarding and rooming house)—have little substantive pertinency in passing on the propriety of regulations in virgin territories.

Townships like Gloucester, with their vast areas of vacant land, have plenty of room in which to accommodate the variety of land uses people of all income levels and individual desires may want to enjoy. Sound planning and zoning regulation by appropriate districts can easily make such uses compatible while avoiding detrimental impact on each other. The technique is to allow for differing uses by putting them in the right places and with accompanying restrictions. I am unconvinced that, "adequate light and air", lessening "congestion in the streets", avoidance of "undue concentration of population", "safety from fire, panic and other dangers" and prevention of suburban blight reasonably require a minimum five acre dwelling lot in 90% of a 24 square mile township with a population of 1600, if that municipality is a growing one or about to be reached by the tide.[3]

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[3] The reference is to *Fischer v. Township of Bedminster*, 11 N. J. 294 (1952), also relied on by the majority. While the court used broad language to be mentioned again shortly, the result of the case is supportable on the proofs set forth in the opinion. They showed a completely rural municipality, with land uses and population little changed from what they had been 122 years before. More important, it was said to be in the center of a group of municipalities having substantially the same characteristics and there is no indication given of the probability of a population invasion in the near future. All the expert evidence found the restriction reasonable under the circumstances. The court did say that changed conditions might make the approved restriction unreasonable at a later time. (11 N. J. at 205).

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In my opinion legitimate use of the zoning power by such municipalities does not encompass the right to erect barricades on their boundaries through exclusion or too tight restriction of uses where the real purpose is to prevent feared disruption with a so called chosen way of life. Nor does it encompass provisions designed to let in as new residents only certain kinds of people, or those who can afford to live in favored kinds of housing, or to keep down tax bills of present property owners. When one of the above is the true situation deeper considerations intrinsic in a free society gain the ascendancy and courts must not be hesitant to strike down purely selfish and undemocratic

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I do not mean to urge by what I have said or am about to say that every sparsely populated township cannot zone to maintain, reasonably, present basic rural land uses, at least until growth reaches it. Many such areas are so far away from the metropolitan center and suburbs that any substantial change will not come or be threatened for many years. I speak only of those municipalities where substantial growth has begun or is so practically imminent, that it cannot validly be held off by local legislative walls denominated as zoning.

That this kind of motivation was not entirely absent in the barring of mobile homes from Gloucester Township is indicated by the statement at oral argument of the township's counsel, during the course of discussion of the local reasons for the action, that people who lived in trailers were a shifting population without roots and did not make good citizens. Aside from the fact that such characterizations are today without true foundation, the statement is an example of frequently found resentment and distrust by present residents of newcomers, including renters, who vote on school budgets and the election of local officials with the power over municipal appropriations, but who do not pay real estate taxes directly or in sufficient amount to cover the cost of local services rendered to them.

enactments. I am not suggesting that every such municipality must endure a plague of locusts or suffer transition to a metropolis over night. I suggest only that regulation rather than prohibition is the appropriate technique for attaining a balanced and attractive community. The opportunity to live in the open spaces in decent housing one can afford and in the manner one desires is a vital one in a democracy. It seems contradictory to sustain so readily legislative policy at the state level forbidding various kinds of discrimination in housing, *e.g., Levitt & Sons, Inc. v. Division Against Discrimination*, 31 N. J. 514 (1960), appeal dismissed, 363 U. S. 418, 4 L. ed. 2d 1515, 80 S. Ct. 1257 (1960) and permitting the use of eminent domain and public funds to remove slums and provide decent living accommodations, *e.g., Ryan v. Housing Authority of Newark*, 125 N. J. L. 336 (Sup. Ct. 1940); *Wilson v. Long Branch*, 27 N. J. 360 (1958), cert. den. 358 U. S. 873, 3 L. ed. 2d 104, 79 S. Ct. 113 (1958) and at the same time bless selfish zoning regulations which tend to have the effect of precluding people who now live in congested and undesirable city areas from obtaining housing within their means in open, attractive and healthy communities.

Lionshead (10 N. J. at 173-175), and *Fischer* in the breadth of some of its language (41 N. J. at 204, 205), rationalize such exclusionary results, as does the majority here, by reference to the statutory zoning purposes, R.S. 40:55-32, of "conserving the value of property" and "encouraging the most appropriate use of land" and in the name of preservation of the character of the community or neighborhood. I submit these factors are perverted from their intended application when used to justify Chinese walls on the borders of roomy and developing municipalities for the actual purpose of keeping out all but the "right kind" of people or those who will live in a certain kind and

cost of dwelling. What restrictions like minimum house size requirements, overly large lot area regulations and complete limitation of dwellings to single family units really do is bring about community-wide economic segregation. It is a proper thing to exclude factories from residential zones to conserve property values and to encourage the most appropriate use of land throughout the municipality. It is quite another and improper thing to use zoning to control who the residents of your township will be. To reiterate, all the legitimate aspects of a desirable and balanced community can be realized by proper placing and regulation of uses, as the zoning statute contemplates, without destroying the higher value of the privilege of democratic living. For a fuller discussion see *Williams, Planning Law and Democratic Living*, 20 Law and Contemporary Problems 317 (1955); *Haar, Zoning for Minimum Standards: The Wayne Township Case*, 66 Harvard L. Rev. 1051 (1953); *Haar, Wayne Township: Zoning for Whom, In Brief Reply*, 67 Harvard L. Rev. 986 (1954).

We should not perpetuate or augment this fundamental error of *Flemington*. Prohibition of mobile home parks is of a piece with absolute minimum house sizes there approved and the same reasoning is utilized here to support it. Trailer living is a perfectly respectable, healthy and useful kind of housing, adopted by choice by several million people in this country today. Municipalities and courts can no longer refuse to recognize its proper and significant place in today's society and should stop acting on the basis of old wives' tales. A fair, modern appraisal is found in *Note, Toward an Equitable and Workable Program of Mobile Home Taxation*, 71 Yale L. J. 702 (1962):

> "Between 1951 and 1956 the mobile home population doubled; it currently totals over 3,000,000 persons.

Appendix C

The number of mobile homes in use grew from 550,000 in 1953 to 1,200,000 in 1959. This figure has been augmented by mobile homes recently produced—produced at a rate which exceeds 10 per cent of the private single-family housing starts in this country.

For many years communities viewed the house trailer as the source of at least three major problems: its presence was expected to blight surrounding areas, causing property values to fall; its occupants were often viewed as personally undesirable; and the municipal expense attributable to trailerites was expected to exceed the revenue which could be raised from them.

Community fear of blight can be traced to the low quality of both the early trailers and their parking facilities. Economic conditions of the 'thirties, followed by wartime housing shortages and rapid relocations of the labor force, pressed many thousands of unattractive trailers into permanent use. Often these units were without running water or sanitary facilities. There were no construction standards to insure even minimum protection against fire or collapse. They were parked in areas which were usually crowded, poorly equipped, and generally unsuited to residential use. As a result, conditions in these parks seldom exceeded minimum health and sanitation standards. The specter of such parks teeming with tiny trailers made community apprehension understandable. But substantial improvements in the quality of both mobile homes and park facilities may have undermined the bases for this antipathy today. The mobile home currently produced is an attractive, completely furnished, efficiently spacious dwelling for which national construction standards have been adopted and enforced by the manufacturers' associations. Some of today's

parks are landscaped, and feature ample lots imaginatively arranged around paved streets. Recreation facilities—such as swimming pools, boat docks and playgrounds—found in high quality parks could be the envy of conventional housing developments. *Although many parks have yet to match such progress, communities have ample power to require improvement of existing facilities and to set high standards for future park construction. They need only exercise it.*

Community distaste for trailer dwellers personally developed at a time when the trailerites were often considered footloose, nomadic people unlikely to make any positive contribution to community life. The early trailer was used primarily by tourists and transient workers; the permanent residents who did use trailers were likely to be low income workers with temporary positions. Mobile homes, however, can no longer be said to be inhabited primarily by migratory paupers; according to recent surveys, the present occupations and incomes of their occupants vary widely. Skilled workers, many of whom are engaged in construction or mineral development, now seem to form the largest single group of mobile home owners. Many mobile homes are also used by military personnel, young couples, and retired persons. Even professional people, perhaps attracted by the comfort available in a high quality mobile home and park, perhaps by tax economies, currently represent a large segment of the mobile home population. With the increasing variety of occupational groups living in mobile homes has come a substantial upgrading in income level. In 1958, the median income of mobile home dwellers ($5,250) was approximately the same as the national average ($5,

300). There seems little justification, therefore, for any continuing personal antipathy toward mobile home dwellers as a group." (at pp. 702-704) (emphasis supplied).

In the face of these facts, it is arbitrary to permit the prohibition of mobile home parks completely in a municipality where they can be placed in appropriate districts and in which there is a need or demand for them. To hold otherwise would be to allow any method of housing to be outlawed by local whim. I cannot understand how, in a large and roomy township, a properly situated and regulated mobile home park can have a detrimental effect on the value of all the property in the township or in its overall attractiveness any more than industrial and commercial districts or even small lot housing developments.[5]

[5] It should be noted that, as we were advised at oral argument, the mobile home industry in this state now accepts the proposition that trailers properly belong in parks and may legitimately be barred by zoning as single dwellings on individual lots in residential zones. *Napierkowski v. Township of Gloucester*, 29 N. J. 481 (1959). The best modern planning thought seems to be that, since mobile home living is truly residential, parks should be situated in a residential type of environment and not in commercial and industrial districts. They are, in effect, a horizontal multi-residential use,—no more of a commercial venture than a rented garden apartment. The suggestion seems sound that they should be located in districts akin to multi-family residential zones away from-bus highways, but with particular requirements of ground area, arrangement, buffers and the like to immunize any adverse impact on other uses in the vicinity. Bartley and Bair, *Mobile Home Parks and Comprehensive Community Planning* 77-79, (1960). The special exception technique, N.J.S.A. 40:55-39(b), would appear to be an especially appropriate method of handling both specific location and desirable physical regulations of each individual case.

Moreover, the aesthetic warrant for the prohibition, additionally relied upon by the majority, is not a reasonable basis for the exercise of zoning power in this situation. Without getting into all the ramifications surrounding the difficult question of how and to what extent aesthetics may validly be considered in zoning regulations, it certainly is not enough to sanction exclusion of a particular kind of use on the sole ground that its appearance offends the subjective sensibilities of the local governing body. Objective standards in this field are hard enough to fashion and work with, for even expert tastes vary so greatly. Bassett, *Zoning* 97-98 (1940). Letting a use be controlled by individual preferences and prejudice, devoid of standards entirely, is the antithesis of proper judicial review. The majority's view could as well support exclusion of modernistic dwelling architecture, split level homes, or even whole developments of identical houses if a bare majority of the township committee does not like their looks.

Nor is a use validly prohibited because it might later develop that the zone for it was improvidently chosen necessitating a change in classification, resulting in a non-conforming use. If this were to be a sound criterion, we could never have any planning or zoning of virgin areas, for the best theoretical views of planners may often not work out in practice and amendment is frequently found necessary.

I have no doubt that, if the issue in this case is approached in the way I have indicated it should be, the particular circumstances in Gloucester Township shown by the record are such that prohibition of mobile home parks throughout the municipality should be held unlawful. It is clearly a heterogenous, growing municipality, very close by the Philadelphia metropolitan area, in the path of further expansion of varied kinds. The northern half of its 23 square miles is already quite densely settled, mostly with

small home development and neighborhood business areas along and adjacent to old and new highways. The southern half is very largely undeveloped, with no established character as yet. Most of the vacant land throughout the township is zoned for industrial use, although there is none now. This classification seems more a device to block further home construction on any large scale (as witness the provision permitting dwelling therein only with approval of the Board of Adjustment) than evidence of any real hope of filling with industries the areas so zoned. Planning and zoning to date have been pretty much catch-as-catch can and piecemeal. But practically all conceivable uses except nuisance industries and mobile home parks are permitted. There is plenty of room in the vast undeveloped areas for all manner of classification districts, which, by appropriate regulations, can compatibly exist without deleterious impact on each other and at the same time lead to the creation of a balanced and attractive community. There is nothing to indicate that a mobile home park is not a legally and factually appropriate use somewhere in such a scene. To hold that it is not exceeds the bounds of reason.

I would affirm the judgment of the Appellate Division. Justice Schettino joins in this opinion.

APPENDIX D

Opinion of the Superior Court of New Jersey, Appellate Division

Argued May 1, 1961—Decided June 23, 1961

Before Judges Goldmann, Foley and Lewis

Mr. Sidney D. Weiss argued the cause for appellant (*Mr. Milford Salny, attorney*).

Mr. Vincent L. Gallaher argued the cause for respondents.

The opinion of the court was delivered by

FOLEY, J. A. D.

Plaintiff appeals from a judgment entered in favor of defendants in two suits in lieu of prerogative writs, consolidated for trial, challenging the validity of two ordinances of the Township of Gloucester prohibiting the establishment and conduct of a trailer park business on plaintiff's property.

Plaintiff contends: (1) an amendment to a zoning ordinance prohibiting trailer parks in the industrial zone, the only zone where they had theretofore been permitted, was illegal and void because the Planning Board did not have the opportunity to give proper consideration to the matter as required by R.S. 40:55-35, and (2) complete prohibition of trailer parks in every part of the municipality, as effected by the amendatory zoning ordinance and the repeal of a trailer regulatory ordinance, constituted an arbitrary and unreasonable exercise of the zoning power and the police power.

The determinative facts are not in dispute. On July 1, 1957 Gloucester Township adopted a zoning ordinance which established Residence Districts "A," "B," "C,"

and "D," Business District, Agriculture District, and Industry District. Trailer parks not being specifically included in the permissible uses of property zoned for residence, business or agriculture, and not being expressly excluded from the uses permitted in the industrial zone, became a lawful use in such zone.

On September 3, 1957 the Township enacted an ordinance regulating the operation of trailer camps and allied activities in the municipality.

In November of 1957 plaintiff purchased a parcel of land, approximately 10 acres in area, situate in an industrial zone. In April of 1959 the Supreme Court upheld both the zoning ordinance and the trailer ordinance in the case of *Napierkoiski* v. *Township of Gloucester*, 29 N. J. 481 (1959). *Inter alia* the case held that the Township had the right to prohibit by its ordinances as they then existed, the maintenance of trailers at any place other than in the industrial areas defined by the zoning ordinance.

On August 26, 1959 plaintiff made application to the Township for permission to operate a trailer park on the lands he had purchased. On December 8, 1959 he was formally notified by letter that his application was denied because it "would be in violation of the Sub-Division and Zoning Ordinance of the township and also the individual trailers would not comply with the provisions of the building code." Meanwhile, on September 19, 1959 plaintiff had acquired title to a second parcel of land, also in the industrial zone and located directly across the road from that which he already owned.

On December 30, 1959 plaintiff filed a complaint in lieu of prerogative writs directed against the denial by the Township Committee of his application to operate a trailer park. The case came on for hearing on March 17, 1960 at which time the court heard the testimony of the plaintiff,

and some expert testimony as well. Much of the testimony at that session pertained to the question of whether plaintiff's application and plans complied with the standards promulgated by the State of New Jersey, Department of Health. On motion plaintiff was granted leave to amend his application and the plans which accompanied it. Trial was resumed in June of 1960 and at this session it was stipulated by counsel that the amended application and plans, as submitted, complied with the aforesaid standards.

However, on April 22, 1960 the Township amended its zoning ordinance so as to prohibit trailer parks in the industrial zone. Simultaneously, the Township adopted another ordinance repealing the trailer ordinance. The effect of these enactments was to prohibit the operation of trailer parks or the maintenance of trailers in any part of the Township.

On May 5, 1960 plaintiff instituted a second action in lieu of prerogative writ demanding that the ordinances of April 22, 1960 be declared invalid, and inapplicable to the use of his property as a trailer park.

At the first trial plaintiff introduced evidence relating to the nature and character of the community, particularly the industrial zone. This evidence included photographs of homes and other structures in the immediate vicinity of the subject premises. These structures included an old bus used as living quarters; a one-story shack used for repairs of television sets; a combination trailer and dwelling; a farmhouse and barn; several old dilapidated shacks; a one-story structure utilized as a church; and some dwellings ranging from bungalow-shanties to modest homes. There was also testimony that there were no housing developments between the subject property and the "Freeway" on the north, a distance of approximately two miles; that there were no housing developments of any kind be-

tween the subject property and the boundary of the Township on the east; that there were no industrial operations of any kind near the subject property; and that the great majority of the houses south of the subject property were old, dilapidated, and occupied by persons in very low income brackets. It was also testified that the location of a trailer park on plaintiff's property would have no adverse effect on the economic conditions or values of the neighborhood, and that it would be an appropriate use of the land in question.

The second of plaintiff's actions came on for trial on June 20, 1960 before the same judge who had heard the first case, at which time the actions were consolidated. Evidence was taken on two subjects: (1) the alleged noncompliance by the Township Committee and the Planning Board with the provisions of R.S. 40:55-35, and (2) the reasons which motivated the Township Committee in adopting the ordinance of April 22, 1960 amending the zoning ordinance, and on the same date enacting the repealer of the trailer ordinance. Since, as will shortly appear, we consider the second point to be dispositive of the case, the facts concerning the alleged procedural irregularity need not be recited.

Robert Yost, Mayor of the Township, testified that in adopting the amendment the Committee "took many things into consideration; future over-all planning of our Township; the acquisition of 500 acres of development ground bought by developers, adjacent to Mr. Vicker's property, also taking in connection with the Freeway; the other sections of our Township are fairly well built up and the development is working further south." He said also, that it was felt that a trailer park would not enhance the property value of any development, that trailers, "as a general run," are unsightly and that the Committee could not see "with the present growth; also with the view in mind

of future growth of planning where trailers would add to it." He also testified that the population of the Township had grown from 7,950 in 1950 to approximately 17,500.

John J. Sparks, 3rd, building inspector of the township, said that the municipality had in effect a general program to repair or demolish structures reported to be in a dilapidated or run down condition.

William J. Davenport, Tax Assessor for the township, testified that the township was an expanding community and that the number of housing units had increased from 2,694 in 1955 to 4,113 as of September 1959.

The oral determination of the trial court was cast in somewhat general terms and seems to have been guided mainly by the court's interpretation of *Napierkowski v. Gloucester Twp., supra.* In effect the trial court rejected the arguments upon which the present appeal is grounded. While *Napierkowski* is helpful, the holding does not control the present dispute since there the court was concerned only with the legality of the prohibition against the maintenance of a trailer as a residence in a residence district, as distinguished from the total prohibition of trailer residences in the township. As a matter of fact the question now presented was expressly left open by *Napierkowski*, when the court said:

> "Provisions for the utilization of trailers in licensed trailer parks as distinguished from the private lot of the trailer owner does not amount to total prohibition, but rather falls within the confines of reasonable regulation. We are cognizant of the fact that there presently are no trailer parks or camps within the township. The township is, however, not obligated to furnish trailer park facilities and *so long as such parks are not totally prohibited* we need not consider the question of whether the character of the township

is such that even exclusion of trailer parks is permissible. See *Finn* v. *Wayne Tp.*, 53 N. J. Super. 405 (App. Div. 1959); *Connor* v. *West Bloomfield Tp.*, 207 F. 2d 482 (6 Cir. 1953)." 29 N. J. at page 497. (Emphasis added.)

It is settled beyond dispute that in proper circumstances total prohibition of a given use, or class of uses is within the authority conferred by the zoning power even though such use or class be not inherently objectionable. See *Duffcon Concrete Products* v. *Borough of Cresskill*, 1 N. J. 509 (1949) (exclusion of heavy industry from a primarily residential town); *Pierro* v. *Baxendale*, 20 N. J. 17 (1955) (exclusion of motels); *Fanale* v. *Hasbrouck Heights*, 26 N. J. 320 (1958) (exclusion of additional apartment houses from a small highly developed community). In *Fanale* the court stated: "* * * whether a use may be wholly prohibited depends upon its compatibility with the circumstances of the particular municipality, judged in the light of the standards for zoning set forth in R.S. 40:55-32." That section provides:

> "Such regulation shall be in accordance with a comprehensive plan and designed for one or more of the following purposes: to lessen congestion in the streets; secure safety from fire, panic and other dangers; promote health, morals or the general welfare; provide adequate light and air; prevent the overcrowding of land or building; avoid undue concentration of population. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view of conserving the value of property and encouraging the most appropriate use of land throughout such municipality."

Appendix D

Thus it may be said that the *ratio decidendi* is whether the total prohibition bears a reasonable relationship to the purposes of zoning in light of the existing zoning pattern of the township, and the past, present and foreseeable future development of land use within its borders. To these factors must be added, among others, the area of the municipality, the size of its population, and in connection therewith the impact, if any, of regulated trailer parks upon land values and the general public welfare.

Exercising our original jurisdiction under R.R. 1:5-4(a) we test the facts presented, by the cited standards. In addition to the uncontroverted proofs hereinabove set forth, it was conceded that the township occupies an area of 32 square miles. Its general characteristics are distinctly rural and its sprawling territory, relatively, is sparsely settled. Reference to the zoning map discloses that residence use has developed mainly in the northwesterly portion of the area along the Black Horse Pike. Provision has been made for the natural expansion of this development by zoning the remainder of the northerly section and also the northeasterly section for residence use. However, with the exception of contiguous sections designated on the map as Clementona, Erial, Dicktown and Little Gloucester, the entire southerly half of the township is zoned mainly for industrial use. The entire picture presented very definitely gives the impression that the planned future of the township, as reflected by the high proportion industrial districts bear to the whole, does not contemplate that the township will become what is commonly called a "residential town." On the contrary it appears that the zoning power has been used in the hope of attracting industry. We pause to note parenthetically that on the oral argument it was revealed that during the pendency of this litigation the Township Committee, now so emphatically arguing the potentially residential character of the munici-

pality, actually added to the already considerable industrial area by transferring a part of a residential district, fairly nearby, to the industrial district. Seemingly this demonstrates a marked inconsistency in the thinking and purposes of the governing body.

Viewing the facts comprehensively, we find it impossible to reconcile the complete exclusion of trailer parks with the rule laid down in the cited cases. Surely, in this vast rural area, there must be some portion in which the operation of trailer parks would be compatible with the scheme of zoning the township has seen fit to select, and yet would not adversely affect existing or future uses of property located anywhere in the township, and however zoned.

We therefore conclude that the amendment of the zoning ordinance of April 22, 1960 must be set aside as an unreasonable and arbitrary exercise of the zoning power. The township was, of course, at liberty to repeal the regulatory trailer ordinance, and its action in that regard will not be disturbed.

This disposition of the case makes it unnecessary for us to pass upon the alleged irregularity in the combined action of the Township Committee and the Planning Board with respect to the extent of consideration given to the proposed amendment by such board. We pass no judgment thereon, but draw to the attention of both municipal bodies a pronouncement contained in the recent case of *Reinauer Realty Corp. v. Paramus*, 34 N. J. 406, 415 (1961):

> "The administration of justice is not served by deliberate failure to follow established procedural rules. Procedural regularity is one of the essentials of the judicial process."

Reversed and remanded for proceedings not inconsistent herewith.

APPENDIX E

Oral Opinion of Hon. W. O. Shalick in Law Division

[Friday, July 1, 1960]

(182) The Court: This is the trial of two issues, consolidated for the purpose of trial, in which Harold E. Vickers, property owner in the Township of Gloucester, in Camden County, has brought actions in which in the first instance, complaint was filed on December 30, 1959, and in the second case, the complaint was filed on May 5, 1960.

These are actions in the nature of prerogative writs to, in the first suit, compel the Township Committee to issue a permit to the plaintiff for a trailer camp on his property in that township, and in the second case, to test in substance the validity of two ordinances, one being an ordinance which was an amendment to the then existing Zoning Ordinance, and the other to test the validity of an ordinance which repealed the Trailer Camp Ordinance.

As a background of this particular case, I think it necessary to review briefly, that in the first issue (183) here, in the attempt on the part of the plaintiff to bring an action to compel a township to issue a trailer park license, the Court took testimony, I believe in March of this year, and after testimony was taken on the part of the plaintiff pertaining to the plaintiff's application and some expert witnesses, plaintiff applied to this Court for the privilege to amend the application and the plans therefor filed with the Township Committee, and the Court in response to that request granted it and continued the matter to be heard after that was completed.

It was the mind of the Court at that particular time that there were certain legal issues which must and would necessarily have to be solved between the plaintiff and this Township Committee, and that until those issues were so

framed, that they could be resolved either for one or the other, it would mean Court time and multiplicity of suits, if the Court did (184) not permit the plaintiff to amend the plans and application, in accordance with his motion and Court's direction.

In the intervening time, since the last Court session in March, plaintiff filed amended plans and amended application, and it is admitted to that phase, to the present time, there having been previously a question in issue whether the plaintiff's plans and application would, in relation to this property and the highway, meet the demand and requirements of the township as to sewerage.

It is now admitted and stipulated that the amended plans filed in accordance with the plaintiff's application met the requirements as promulgated by the State Department of Health.

The next step that we must consider is that between the last Court session and today, the Township Committee of the Township of Gloucester, saw fit to adopt an amendment to their Zoning Ordinance, (185) which amendment in effect amends the ordinance so that the industrial district in which the subject premises are located, now bars trailer camps. Previous thereto this was not so.

Further attention must be given to the fact that at an earlier time, 1947, there was passed an ordinance prohibiting trailers and trailer camps, but at some later time there was an ordinance passed permitting trailer camps in this Township. As a result of the last mentioned ordinance prohibiting trailer camps, simultaneous with the passage of the Zoning Ordinance, the Township Committee passed a repealer of the Trailer Ordinance, and repealed the Trailer Camp Ordinance which in legal effect abolished the ordinance which permitted trailer camps in this township.

Appendix E

This was the subject of the second suit, which we are trying, to test the validity of the amendment to the Zoning Ordinance, and also the legality of (186) the repealer of the Trailer Camp Ordinance.

We are confronted in this particular case with a municipality in which the issue of trailers has heretofore been in issue before this Court, and which the Supreme Court of this State took jurisdiction and gave to us for the first time a philosophy of law which we may apply in dealing with this subject in the municipalities throughout our State.

Up to that time, or up to the time of the decision of Napierkowski versus Gloucester Township, 29 N. J. Law 481, decided on April 20, 1959, the law of our State in reference to the various phases of municipalities pertaining to trailers, was in a most unsettled state.

We must now view these particular cases in the light of that philosophy which the Supreme Court has so properly given to us. It is probably not necessary to analyze the decision to which I refer, except insofar as it may be important to (187) consider it in reference to the case at hand.

In legal effect, so far as this case is concerned, the Supreme Court has said to municipalities, "It is for you as municipal officials, your duty to analyze your community, to give importance to those things which this decision has determined are important, and on the basis of predicating your analysis on the legal determination, you are then to decide what is the proper municipal action."

True, in that particular case, the Supreme Court reserved in the conclusion of its opinion the consideration of those places where it was determined by municipalities that municipal trailer sites was, or was not to be licensed.

In the langauge of the Court provisions for utilization of trailers and licensed trailer camps as distinguished from

the private lot of the trailer owner, it does not amount to total prohibition, (188) but, rather, falls within the confines of reasonable regulation. We are cognizant of the fact there are presently no trailer parks or camps within the township. The township is, however, not obligated to furnish trailer park facilities, and as long as such parks are totally prohibited, we need not consider the question of whether the character of the township is such that even exclusion of trailer parks is permissive.

To continue quoting under the Township Zoning Ordinance, "Trailer Parks would be permitted in the industrial districts in which land may be used for any lawful purpose," except certain enumerated obnoxious business enterprises.

The Court quotes that particular provision because land of the plaintiff in this case, prior to the amendment of the ordinance, was included in an industrial district, and the ordinance at the time of the cited decision in reference to trailer (189) parks was also to the effect that trailer sites would be permitted.

Referring to the fact that there is a philosophy in this case, I think we must take into account the reasoning, the background and the determination of this particular decision. I cannot help but find within the limits of this decision a somewhat definite reasoning that for the most part must be left for municipal determination, subject always to review of the Court, as to whether or not it is arbitrary or discriminatory action.

Furthermore, it so appears to the Court that the overall effect of this decision, insofar as trailers are concerned, is also narrowed by this quotation:

"Zoning must subserve the long range needs of the future as well as the immediate needs of the present and

the reasonable foreseeable future. It is, in short, an implementing tool of sound planning."

The Court realizes that that (190) statement is applicable to all zoning, but, nevertheless, it is a part of the family of this particular decision.

There is another quotation the Court desires to refer to, in these words, "The decisions elsewhere highlight the fact that the use of trailers as permanent residence present problems which are oft-times inimical to the general welfare. In addition to the obvious health and safety hazards, there are other considerations which a municipality must take into account in regulating the use of trailers. Two of the basic concepts of sound zoning, encouragement of the most appropriate use of land, and conservation of property values, may be undermined by the indiscriminate location of trailers within a municipality. There can be little doubt that the maintenance and use of a trailer in a particular locale would tend to stifle development of the area for residential purposes. And from the point of (191) view of aesthetic considerations, which are inextricably intertwined with conservation of the value of property, trailers may mar the local landscape."

This Court is well aware that in that particular case, basically, that reference is to the location of single trailers at different locations. The Court does refer in that case to the fact that in some jurisdictions, there is total prohibition against trailers, with a long line of decisions citing in support thereof.

In this particular case, counsel at the request of the Court has posed certain points of contention which he believes are those with which the Court should deal in making a determination of these issues. One, the validity and legality of the amendment to the Zoning Ordinance, and that would include, of course, the statutory compliance and

meeting the demands of our law in the passage of this ordinance; first being reference to the statute, as (192) to the requirement that must be first introduced by the municipal body, then referred to the Planning Board for their consideration, and it would also include those collateral questions, whether or not the Planning Board had sufficient time, and did give full consideration to the subject at hand, whether there were any improper influences or direction upon the Planning Board that would be removed from them the right to exercise their independent judgments, apart from the Municipal Committee itself, and whether or not there were hurried activities in procuring this passage, as distinguished from the deliberate and full consideration which is always necessary.

Two, whether the repealer of the Trailer Ordinance is an arbitrary and discriminatory act to this plaintiff, and whether it has a legal standing insofar as it repealed an ordinance which therefore permitted trailer camps.

(193) Three, whether or not the total prohibition of trailers, as dwellings is improper, particularly in this industrial district, which is a part of the zoning arrangement of this township.

Four, whether or not the permission of uses of similar nature, such as campsites is not inconsistent with the prohibition against trailers themselves.

I think the Court can say as number five, because it appears in this case, whether or not the plaintiff has acquired what we generally term in law as a vested interest, although it may be not the proper term, but that is whether or not he has an interest which could be denied to him, the right to have a license for a trailer campsite, whatever future interest of the Township Committee may be.

Treating with these questions, we must first have certain rules of law with which we are always confronted. First is

that there is a presumption of (194) the validity of an ordinance passed by the municipal governing body of any municipal agency, that the burden is upon the person attempting to overcome this presumption, in order to establish that that particular ordinance is invalid.

We must also acknowledge that there is vested in the governing body and in the Planning Board, certain statutory authorities. They gained their right to exist and to act in accordance with provisions of those statutes, and in this particular case there can be no question but what under the General Municipal Act as we know it, there is vested the right in a municipal body and Township Committee to pass such ordinances as are given by statute, but also to complement the police powers which are by the very nature a part and right of that municipal body to exercise.

There is a specific reference in the Municipal Act, under the ordinance provision (195) which refers to trailer camps. I do not think that need be commented on further.

As to the obligations imposed upon a municipal governing body that seeks to amend a Zoning Ordinance, the statute is reasonably clear and has been helped considerably by the recent decision of Justice Heher, that there must be a reasonable consideration on the part of the governing body, and that provision has been clarified by the Supreme Court decision to the effect that it must indicate that there is consideration by the Planning Board, and that that consideration should be adequate.

I think it needless for this Court to quote that particular decision, although, there is some relevance here. The decision which I am quoting is Wollen vs. Borough of Fort Lee, 27 N. J. 498.

Then, there is also a question as to the adoption of the amendment of this ordinance, whether it is sound law and (196) does it meet the standards of zoning in this State in

shutting out trailer camps from this industrial district in Gloucester Township?

One other general principle we must always consider in all these cases, particularly zoning cases, the circumstances and conditions surrounding any particular case, and this is most important. It is impossible to predicate our conclusion upon some prior case, except to adopt the theories of law of that previous case, then apply it to the facts as we find them in the case which we have at hand.

The Court shall attempt in dealing with these questions, first to interlace the philosophy of the Napierkowski versus Gloucester Township decision in its findings, and make a determination as to these particular issues, as to the adoption of these ordinances and their validity, and also to give the Court's version as to conditions and circumstances of the (197) municipality of Gloucester Township.

It would vary from fact if we did not conclude that any municipality in Camden County, and, particularly, those townships which are, or municipalities, which are yet not fully developed, that there is an expanding growth and in this position, when the Court deals with this, it is where the philosophy of law included in the Napierkowski case is most important. I think it is the Court's opinion that in that case, and this Court so accepts, that we cannot separate some particular part of the community from the rest of that area and that we cannot particularly deal with just a limited area, but that there must be a standard adopted of treating the entire community, the entire municipality, particularly the main portion of the municipality where the subject premises are, in reference to the use of trailers and trailer sites. The Court finds this community is an expanding community, that this (198) area may not be developing as fast as some others, but, nevertheless, there is a steady and possibly an advanced growth over the expectations we have had through the decade previously.

Appendix E

The Court also finds that this ordinance was adopted according to law, and the reasons of the Court are based on these, and I am referring to the amendment to the Zoning Ordinance. The Court has a realistic enough view of the municipality to believe and to confirm the testimony of witnesses who have been offered in this case, that the trial and determination both in this Court and on appeal of the case of Napierkowski vs. the Township of Gloucester was of immediate concern of the Planning Board and governing bodies of this municipality, and that they did consider pertaining to the question of trailers and had to be guided by the final determination of that issue.

The Chairman of the Planning (199) Board has been offered here as a witness and in his testimony he particularly referred to the fact that this case that I have just cited and previously been under consideration, that it had formulated a part of their consideration both officially and otherwise, and that as a result there was some consideration of this question at the time of trial of this issue in March, which resulted in their considering together, not by the minutes of the Board officially, but in considering as one of the problems which they must meet in planning and zoning in that township. We have decisions in our State that the mere fact that an attempt to bar a particular person who may have instituted an action, or is about to, even though the action by ordinance of the municipality is for that specific purpose, that even though that triggered the final adoption of the ordinance, that, nevertheless, the ordinance is good, because, as one of the decisions made, it (200) may be that the municipal body may be alerted for the first time as to the need and requirement that this should be done.

Then again, we have a consideration, and counsel has made a very good point and has caused this Court considerable trouble, and that is that the ordinance was introduced

on one night, the Township Committee meeting was adjourned, it was referred to the Planning Board, the Planning Board recommended it, and the information was relayed back to the Township Committee within one hour, that the Planning Board had recommended it, but in view of the testimony which the Court has referred to, and in view of the determination of the Planning Board, which sets out its meeting at great length, that a letter later was transmitted to the governing body, where in effect it refers to those particular factors which are legal factors, as well as conditions in this township. The Court finds in that letter a summation (201) which indicates to the Court that the Planning Board had given deliberations to this matter previously, and that this was the hour of determination at its meeting, and that gave expression to it by the letter which was later transmitted and received by the Township Committee at the time the ordinance was finally adopted. If the Court's assumptions are correct, and the Court so finds, then there has been a full compliance with the requirements of our statutes, which gives validity to that ordinance and to its procedural adoption.

There then comes an important question whether or not in this particular municipality, it is possible for it to amend its ordinance by prohibiting, in effect, trailer camps in this industrial district. Prohibiting camp sites for trailers in industrial districts is only one more step to look back into the entire scene and see what is going on. It is only an absolute prohibition of trailer (202) camps in this municipality, and the Court shall deal with it accordingly.

The Court determines that in this expanding community, in this area, in view of the determination of the Supreme Court as to what is to be looked for and what should be found in dealing with municipals as to trailers and trailer sites, the Court finds that this is a municipality where prohibition of trailer camps can be legislated.

Appendix E

As to the question of whether or not the Trailer Ordinance is arbitrary and discriminatory insofar as its repealer of the original trailer ordinance, the Court finds no difficulty in saying by reason of the finding which the Court has just stated, that it is within the police power of the Township Committee to pass a repealer of this Trailer Site Ordinance and for the reasons which the Court has assigned equally applicable as to this repealer, and also the reasons that are embraced (203) within police powers are the right of Township Committees to determine the general welfare, and the other factors are always embraced within police powers, and would give them unquestionably the right to pass this repealer of the Trailer Ordinance.

The Court believes, as to the issue, whether or not the day camp sites giving them rights to exist is inconsistent with the prohibition of trailer sites, the Court determines they are entirely a different category, and that they are so clearly defined and separated by the ordinance itself in its amendment, that there cannot be any argument that such granted permit to day camp sites is either inconsistent or derogatory of the general legal contentment of this particular ordinance.

I also would like to comment that I find that in the action which occurred between the Township Committee and the (204) Planning Board, there was no proof whatever that showed any pressure, or any lack of consideration of their relative positions and right to deliberate separately; that insofar as the record in this case is concerned, it was the independent action of each of those bodies.

For the purpose of the record, I want to include certain references, P-3 in evidence, September 3, 1957, an Ordinance to Regulate Trailer Camps; P-4, April 7, 1947 was the original prohibition against trailer camps; May 20, 1957 was the Zoning Ordinance of this Township; D-1, the second

ordinance in which we are considering the repealer of the Trailer Ordinance and Amendment to the Zoning Ordinance are in evidence as part of the minutes, and they were adopted April 22, 1959.

There is one phase that I recall that I possibly should deal with and that is the right of whether the plaintiff by (205) reason of these previous applications, had acquired some interest which cannot be abrogated or destroyed by reason of the subsequent municipal action.

There was some question as to whether or not the first application was ever acted upon. The second one was denied. Apparently the pending application is still before the municipal body. The law never presumes that something shall be done which will be of no moment, because without a question the defendant Township Committee have taken, and at that time, that by reason of their latest municipal action in passing these ordinances, that that disposes of that question without more.

It is in the record that an earlier time, some few years ago, the plaintiff purchased this property, and that he had made efforts over the period of three years or more, to procure a trailer camp, for the purpose of using it in accordance with his application, for ten (206) trailers; prospectively, without question, seeking to use the other land thereby, and portion of that property, for an increase, as he admitted, but there has never been anything done on these premises, except for the fact some expense incurred in procuring an expert in order to design his application, and also to make tests and studies pertaining to it, which was not anymore than preliminary effort on the part of the plaintiff in order to seek municipal approval.

The second purchase of property, which in this case, is not a part of the pending applications being considered by the Court, and that prospectively, without a question, the

plaintiff sought, or bought the second piece of property with some thought in mind that someday in the future he might utilize it if he were successful. Nevertheless, it has not in itself given him any foundation upon which he can predicate his present action and say (207) that he placed himself in a detrimental position by reason of the action or inaction of the Municipal Committee, from which he cannot reasonably recover, because he has no right to act accordingly.

It is the conclusion of the Court that the amendment to the Zoning Ordinance adopted on April 22, 1969 is valid; also that the repealer which the Court has referred to as the repealer of the Trailer Camp Ordinance, adopted on the same day, is also valid; that by reason of the application and legal effect of these ordinances, the plaintiff must fail, because they intervene and supplant in our law any rights that he may have thereafter, because our Courts will permit introduction of adoption of ordinances during pendency proceedings and even during appeals, and Courts give validity to them, unless there are certain legal conditions upon which the plaintiff can predicate his right of action. The Court finds none (208) of them here and for that reason the plaintiff's action in both cases will be dismissed without cost.

The Court: May I say to you, Mr. Gallaher, I ask that you prepare judgments in these actions, and that you send them to my home in Haddonfield, so that I can sign them and whatever action Mr. Ashell may want to take, that permits him to take it and furthermore, it closes my files. I don't want it to lay over until September. I won't be back here until then.

I want to say to you gentlemen, and I say this with great fervency, it has been most enlightening in this particular case to find lawyers who have so fully embraced and I say

it for no other reason embraced the laws of zoning. Your briefs have been excellent. I assure you we have tried it over a period of time, but your briefs have been excellent; (269) your arguments have been most pointed and the evidence has been presented to purpose.

Thank you very much, gentlemen.

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APPENDIX F

Zoning Ordinance of the Township of Gloucester as Enacted on July 1, 1957

(Opposite) ☛

ZONING ORDINANCE OF THE TOWNSHIP OF GLOUCESTER

Reprint from THE OBSERVER

AN ORDINANCE OF THE TOWNSHIP OF GLOUCESTER, in the County of Camden, and State of New Jersey, Dividing The Area of The Said Township Into Zones Or Districts And Restricting And Regulating Therein The Use of Land And The Nature, Use, Location and Construction Of Buildings; Providing For The Appointment of a Zoning Officer, A Board of Adjustment, And Prescribing The Duties and Functions Thereof; Providing For The Administration and Enforcement Of This Ordinance And Penalties For The Violation Hereof.

BE IT ORDAINED by the Township Committee of the Township of Gloucester, in the County of Camden and State of New Jersey, that:

1. This Ordinance is adopted pursuant to R. S. 40:55-30-52, N. J. S. A.. for the purpose of promoting the health, safety, morals, and general welfare of the citizens of the Township of Gloucester, by lessening conjestion in the streets, road and highways; securing safety from fire, panic and other dangers; to provide adequate light and air; prevent the overcrowding of land and the undue concentration of population; to conserve the value of property; to encourage the most appropriate use of land and coordinating the same with good planning principles for the orderly growth and development of the community.

2. Interpretation: In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of the public health, safety and general welfare and where the provisions of this Ordinance impose greater restrictions than those of any statute of this State, other Ordinance or regulation of the Township of Gloucester, the provisions of this Ordinance shall be controlling. Where the provisions of any statute, other Ordinance or regulation impose greater restrictions than this ordinance, the provisions of such statute, other ordinance or regulation shall apply and be controlling.

3. The Gloucester Township Planning Board shall act and perform the duties and functions of a Zoning Commission, pursuant to the Ordinance creating said Planning Board and R. S. 40:55-1.8, N.J.S.A. In addition to the powers and duties therein enumerated, said Commission shall have the right to recommend and suggest alterations, changes or amendments to this Ordinance and to coordinate all relative agencies in the Township into an effective operational unit for the functional planning and orderly growth and expansion of the community.

ARTICLE I
GENERAL

100: Short Title: This ordinance shall be known as the ZONING ORDINANCE OF THE TOWNSHIP OF GLOUCESTER.

ARTICLE II
ESTABLISHMENT OF DISTRICTS

200: Districts: For the purpose of the Ordinance, the area of the Township of Gloucester is hereby divided into Districts designated as follows:

"A" Residence District
"B" Residence District
"C" Residence District
"D" Residence District
Business District
Agriculture District
Industry District

201: Boundaries of Districts: The boundaries of these districts are hereby established as shown on the map entitled "Zoning Map of Gloucester Township, Camden County, N. J., Dated September, 1955, Revised May 20, 1957", which accompanies and is hereby declared to be a part of this ordinance and a copy of which is on file with the Gloucester Township Clerk. Figures indicating number of feet appearing on said map between a road, street, avenue, or railroad right-of-way, and the boundary line of a District, mean that the boundary line of the District at such location runs parallel with the center line of the road, street, avenue, or railroad right-of-way at the distance therefrom indicated by the number of feet marked. Where said map indicates a district boundary approximately in a street, the center line of such street shall be construed to be the boundary.

202: When a District boundary line (other than one located in a street, avenue, road or railroad right-of-way) divides a lot existing in the date of the adoption of this ordinance, the regulations and and restrictions applicable to the less restricted District in which a portion of such lot is located shall apply to the portion of such lot located in the more restricted District for a distance of not more than fifty (50) feet beyond such District boundary line.

ARTICLE III
APPLICATION OF REGULATIONS

300: On and after the effective date of this Ordinance no person shall occupy or use any land or construct or locate any building within the bounds of the Township of Gloucester except in conformity with the Restrictions and Regulations established by this Ordinance for the District in which such land or building is located and in conformity with all other pertinent terms and provisions of this Ordinance.

301: On and after the effective date of the Ordinance no person, whether acting as manager, agent,

architect, engineer, contractor, artisan, mechanic, laborer or otherwise, shall aid or assist any person in the occupation or use of any land or in the construction or location of any building within the bounds of the Township of Gloucester unless such occupation or use of land or unless such building be in conformity with the Restrictions and Regulations established by this Ordinance for the District in which such land or building is located and in conformity with all other pertinent terms and provisions of this Ordinance.

302: Any building that shall have been constructed or located on or after the effective date of this Ordinance in violation of the Restrictions and Regulations established thereby for the District in which such building is located and (or) in violation of any of the other pertinent terms or provisions of this Ordinance, shall be changed, altered, corrected and (or) relocated by the person who constructed or located such building and by the owner of the land on which such building is situate so that such building and the premise of which it is a part shall thereafter conform with the Restrictions and Regulations established by this Ordinance for the District in which such building is located and shall conform with all other pertinent terms and provisions of this Ordinance. Such change, alteration, correction and (or) relocation of building shall be made and effected within thirty (30) days next after the Zoning Officer shall have made and shall have served upon the person who constructed or located such building and upon the owner of the land on which such building is situate, an order in writing, directing that such change, alteration, correction and (or) re-location of building be made and effected within thirty (30) days next after the making and service of such order; which order the Zoning Officer may serve or cause to be served by delivering the same or a duplicate thereof to the person to whom such order is directed or by forwarding the same or a duplicate thereof by first-class mail to the last known post office address of such person and by posting a duplicate of such order on the building or premises mentioned therein.

303: These Restrictions and Regulations shall be subject to such powers as may be given to the Board of Adjustment by Law or by this Ordinance.

ARTICLE IV
DEFINITIONS

400: For the purpose of this Ordinance any words used in the present tense include the future; the plural number includes the singular; the words "used for" include the meaning "designed for"; the word "building" includes the word "structure". For the purpose of this Ordinance certain terms and words are hereby defined as follows:

401: STREET LINES: The lines upon which the width of the abutting street is established; i.e., the property line and not the curb line.

402: ALLEY: Any roadway or public way dedicated or opened to public use, or shown on the township map and not opened, twenty feet or less in width.

403: CERTIFICATE OF OCCUPANCY: A statement signed by the Zoning Officer, hereinafter mentioned, setting forth either that a building or structure does or does not comply with this Ordinance, or that a building, structure, or parcel of land, may lawfully be used for specified uses, or both.

404: CURB LEVEL: The elevation of the top of the curb or the established curb grade opposite the center of the building or portion thereof under consideration. Where the building does not adjoin the street, the average elevation of the proposed grade line of the ground immediately adjacent to the building as shown on the building plans shall be considered as the curb level.

405: CURB LINE: The line of the curb as presently existing or as may hereafter be established by the governing body of the Township.

406: ONE-FAMILY DETACHED DWELLING: A Building designed for an occupied exclusively as a residence for only one family and having no party wall in common with an adjacent building.

407: TWO-FAMILY DETACHED DWELLING: A building designed for and occupied exclusively as a residence for two families, with one family living wholly or partly over the other, and having no party wall in common with an adjacent dwelling.

408: SEMI-DETACHED DWELLING: A building designed for and occupied exclusively as a residence for only one family, applied to one of two houses which are detached from other buildings and joined together by a single party wall.

409: FAMILY: (a) An individual; or (b) Two or more persons related by blood or marriage living together; or (c) A group of individuals of not more than six persons, not related by blood or marriage, but living together as a single housekeeping unit. In each instance the family shall be understood to include the necessary servants; and, in the first two instances (a or b above) may be understood to include, in addition, not more than four lodgers or roomers taken for hire.

410: FARM: A plot or parcel of

land having an area of not less than five (5) acres, annually used for agricultural purposes for profit.

411: FARM BUILDING: Any building used for storing agricultural equipment or farm produce, housing livestock or poultry, or processing dairy products. The term "farm building" shall not include a dwelling.

412: PRIVATE GARAGE: A garage in which no business, service or industry is carried on and which is designed to contain not more than three motor vehicles.

413: PUBLIC GARAGE: Any garage not included within the definition of a private garage.

414: NON-CONFORMING USE: A use of a building or lands that does not conform with the Regulations of the District in which it is situate.

415: HEIGHT OF BUILDING: The vertical measurement from the curb level to the highest point of the roof, if the roof be flat or have a slope of less than fifteen (15) degrees from the horizontal, or to a point midway between the peak and the eaves of a roof having a greater slope; provided, however, that any permitted chimney, spire, elevator, penthouse, tank or similar structure above the roof of a building shall not be included in calculating the height of such building.

416: HEIGHT LIMIT: A vertical distance fixed in each district and measured from the curb level.

417: LOT: Any separate parcel of land having boundaries fixed by deed of conveyance recorded in the Office of the County Register of Deeds or by map filed in said Office. Where any boundary line of a lot is located within a highway, street or avenue, the boundary line of the lot, for the purpose of this Ordinance, shall be deemed to be the nearest side line of such highway, street or avenue.

418: DEPTH OF LOT: The mean horizontal distance between the front or street lot line and the rear lot line.

419: WIDTH OF LOT: The horizontal distance between the side boundary lines of the lot measured at the building line excepting where the side lines of the lot converge towards the rear, in which cases the width of the lot shall be measured on a line parallel with the building line and 25 feet in back of the building line.

420: BUILDING LINE: A line fixed in each district establishing the depth of the front yard and fixing the front limits of any building.

421: CORNER LOT: A lot abutting upon two or more streets at their intersection. The owner, when first applying for a building permit shall designate which of the two streets is to be the principal frontage for the purpose of establishing the front, rear, and sideyard requirements of the lot.

422: INTERIOR LOT: Lot the side lines of which do not abut on a street.

423: THROUGH LOT: An interior lot having frontage on two streets, or one street and an alley.

424: MIXED OCCUPANCY: Occupancy of a building or land for more than one use.

425: PORCH: A roofed, open structure projecting from the front, side or rear wall of a building, and having no enclosed features of glass, wood or other material more than thirty inches above the floor thereof, except the necessary columns to support the roof.

426: STORY: That portion of a building included between the surface of any floor and the surface of the next floor above it, or if there be no floor above it, then the space between such floor and the ceiling next above it.

427: HALF STORY: A story under a gabled, hipped or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than two feet or less than one foot above the finished floor of such story.

428: STRUCTURE: Any thing constructed or erected, the use of which demands its permanent location on the land, or anything attached to something having a permanent location on the land.

429: STRUCTURAL ALTERATION: Any change in the supporting members of a building or structure, such as bearing walls, columns, beams or girders, joists, or rafters, or enclosure walls.

430: STREET: Any roadway or public way dedicated or opened to public use, or shown on the Township map, except an alley.

431: YARD: An open, unoccupied space on the same lot with a building, unobstructed from the ground to the sky except as otherwise provided herein.

432: FRONT YARD: A yard across the full width of the lot, extending from the front line of the building to the front line of the lot except as otherwise provided herein.

433: REAR YARD: A yard across the full width of the lot, extending from the rear line of the building to the rear line of the lot.

434: SIDE YARD: A yard between the side line of the building and the adjacent side line of the lot, extending from the front yard to the rear yard; if there be no front yard the side yard shall be considered as extending to the front line of the lot, and if there be no rear yard the side yard shall be considered as extending to the rear line of the lot.

435: ACCESSORY BUILDING: A building or structure subordinate

to, and located on the same lot with, a main building, and designed, intended or used as an accessory use.

436: ACCESSORY USE: Use of a building, lot, or portion thereof, which use is customarily incidental and subordinate to the principal use of the main building or lot.

437: OFFSTREET PARKING FACILITY: A "parking area" as hereinafter defined, for the parking of passenger vehicles of the occupants, employees, visitors and patrons of specified types of buildings.

438: PARKING AREA: An open, offstreet land area, including parking spaces and access and egress drives or aisles, used or required by this ordinance for parking of automobiles or other vehicles exclusively, and in which no gasoline or automobile accessories are sold and no other business is conducted.

439: JUNK YARD: Any place used for the collection, storage, purchase or sale of junk, rags, bones, old rope, old iron, old automobiles, brass, cooper, tin, or other metals, old bottles, glass, or other obsolete articles of any and every nature and description whatsoever.

440: GASOLINE STATION: Any establishment which stores, sells or dispenses fuel for motor vehicles, including a motor vehicle fuel pump maintained for private use.

441: RESIDENCE ACCESSORY USES: In any residence district, accessory uses shall be used customarily incident to the principal uses listed as permitted. They shall be understood to include, among other things:

(a) An office or studio, such as that of a physician, dentist, musician, artist, teacher, architect, lawyer or other professional person when located within or directly attached to his or her dwelling, which is used primarily as a dwelling; and home occupation such as dressmaking or millinery engaged in by persons only of the immediate family and within their own dwelling.

(b) The renting of rooms or lodges or the serving of meals for compensation, to not more than four persons.

(c) Business sign, if consistent with Article 12. Maximum height, 2'; Maximum width, 3'.

(d) Fence, hedge, or inclosure wall, if consistent with Article 14.

(e) In a residential district, a detached accessory building shall be on the same lot as the main building, shall be not more than twenty feet in height and shall be not less than five feet from any side or rear lot line and not closer to the front street line than the rear extremity of the main building.

(Where self employed artisans conducting business residence, may advertise with sign not exceeding business sign limitation.)

ARTICLE V

"A" RESIDENCE DISTRICTS

Use Restrictions and Regulations

500: In all "A" Residence Districts the following uses (and no others) of lands and buildings are permitted.

(1) Tilling of the soil as an accessory use.

(2) One family detached dwelling.

(3) Municipal Building, Telephone Exchange, Church, Public or Private School, Manse, rectory, convent, park, playground, public library.

(4) Private Garage

(5) Residence Accessory Uses.

501: AREA RESTRICTIONS AND REGULATIONS

In all "A" Residence Districts the following area restrictions and regulations are established.

(1) The area of the lot shall be not less than 9,375 square feet and the width of the lot shall be not less than 75 feet and the depth of the lot shall be not less than 125 feet.

(2) Not more than twenty (20) per cent of the lot may be occupied by buildings.

(3) There shall be a front yard on each street on which the lot abuts, which yard shall be not less than 30 feet in depth, provided that the front yard on the long side of a corner lot may be reduced to a depth of not less than 20 feet.

(4) There shall be two side yards, neither of which yard shall be less than 10 feet in width.

(5) There shall be provided an off street parking area of not less 200 square feet.

502: BULK RESTRICTIONS AND REGULATIONS

In all "A" Residence Districts the following bulk restrictions and regulations are established:

(1) No building, structure or any part thereof shall exceed thirty-five (35) feet in height.

(2) No building shall have usable first floor area of less than 800 square feet, except in the case of the type of building known as "split level". The usable first floor area of a "split level" dwelling shall be no less than 700 square feet, excluding garage floor level where garage is an integral part of the dwelling and under second floor level. If garage is an integral part of the dwelling, the usable first floor area shall be not less than 800 square feet. The total floor area, in any event, to be not less than 1000 usable square feet.

ARTICLE VI

"B" RESIDENCE DISTRICTS

600: USE RESTRICTIONS AND REGULATIONS

In all "B" Residence Districts

the following uses, (and no other) of lands and buildings are permitted.

(1) Tilling of the soil as an accessory use; keeping or raising of poultry as an accessory use, the keeping of horses (3) for recreational use, provided that the area of the lot on which such use is conducted shall not be less than twenty thousand square feet, and that any building or area used for keeping or raising of poultry or horses shall be located not less than 50 feet from any street line, and not less than 30 feet from any property line.

(2) One family detached dwelling.

(3) All uses permitted by this Ordinance in "A" Residence Districts under Section 500, paragraphs (3), (4), and (5).

(4) Hospital, sanitarium, cemetery, and club or lodge organized for fraternal or social purposes, the building and services of which are for use of members and guests only, when any of the aforesaid uses mentioned in this paragraph are authorized by the Township Committee upon recommendation, after public hearing, of the Board of Adjustment.

601: AREA RESTRICTIONS AND REGULATIONS

In all "B" Residence Districts the following area restrictions and regulations are established:-

(1) The area of the lot shall be not less than one (1) acre, the width of the lot shall be not less than one hundred (100) feet and the depth of the lot shall be not less than one hundred fifty (150) feet.

(2) Not more than fifteen (15) per cent of the lot may be occupied by buildings.

(3) There shall be a front yard on each street on which the lot abuts, which yard shall be not less than forty-five (45) feet in depth, provided that the front yard on the long side of a corner lot may be reduced to a depth of not less than thirty (30) feet.

(4) There shall be two side yards, which yards shall be not less than forty (40) feet in aggregate width and neither of which shall be less than fifteen (15) feet in width.

(5) There shall be provided an off street paved and drained parking area of not less than 500 square feet.

602: BULK RESTRICTIONS AND REGULATIONS

In all "B" Residence Districts the following bulk restrictions and regulations are established.

(1) No building, structure or any part thereof shall exceed thirty-five (35) feet in height.

(2) No building shall have less than 1600 square feet of usable living space, exclusive of garages, utility rooms, with a first floor minimum of 1200 square feet.

ARTICLE VII

"C" RESIDENCE DISTRICTS

700: USE RESTRICTIONS AND REGULATIONS

In all "C" Residence Districts the following uses (and no others) of land and buildings are permitted.

(1) All uses permitted by this ordinance in "A" Residence Districts.

(2) Two-family Detached Dwelling

(3) Semi-detached Dwelling

701: AREA RESTRICTIONS AND REGULATIONS:

In all "C" Residence Districts the area restrictions and regulations required in "A" Residence Districts are hereby established, except when a lot is to be occupied by two families, the following additional restrictions and regulations are established:

(1) The area of the lot shall be not less than 12500 square feet and the width of the lot shall be not less than 100 feet.

(2) Not more than thirty-five (35) per cent of the lot may be occupied by buildings.

(3) There shall be a front yard on each street on which the lot abuts, which yard shall be not less than 25 feet in depth, provided that the front yard on the long side of a corner lot may be reduced to a depth of not less than 20 feet.

(4) There shall be two side yards, neither of which yard shall be less than 10 feet in width.

(5) There shall be provided a paved and drained off street parking area of not less than 500 square feet.

702: BULK RESTRICTIONS AND REGULATIONS

In all "C" Residence Districts the bulk restrictions and regulations required in "A" Residence Districts are hereby established except when a lot is to be occupied by two families, the following additional restrictions and regulations are established.

(1) No building or any part thereof shall exceed in height 35 feet.

(2) Each family unit shall have not less than 800 square feet of usable living space.

ARTICLE VIII

"D" RESIDENCE DISTRICT

800: USE RESTRICTIONS AND REGULATIONS

In all "D" Residence Districts the following uses (and no others) of lands and buildings are permitted.

(1) All uses permitted by this Ordinance in "A", "B", or "C" Residence Districts.

(2) Multiple dwellings (apartment house) designed for no more than twenty (20) dwelling units.

(3) Multiple dwellings (garden type) apartments designed for no more than twenty (20) dwelling units.

(4) Accessory use on same lot

with and customarily incidental to the above permitted use.

801: AREA RESTRICTIONS AND REGULATIONS

In all "D" Residence Districts the area restrictions and regulations required in "C" Residence Districts are hereby established, except when a lot is to be occupied by multiple dwellings, the following additional restrictions and regulations are established.

(1) The area of the lot shall be not less than three thousand (3000) square feet per family with a minimum of one acre per plot.

(2) Not more than fifty (50) per cent of the lot may be occupied by buildings when lot is used for multiple dwellings.

(3) There shall be provided a paved and drained off street parking area of not less than 200 square feet per family, exclusive of aisles and drives giving access thereto.

802: BULK RESTRICTIONS AND REGULATIONS

In all "D" Residence Districts the Bulk Restrictions and Regulations required in "C" Residence Districts are hereby established except when a lot is to be occupied by multiple dwellings, the following additional restrictions and regulations are established.

(1) No building or any part thereof shall exceed fifty-five feet (55) in height.

(2) The minimum size of any multiple dwelling shall be not less than 600 square feet of living space per family, exclusive of public halls and stairs.

ARTICLE IX

BUSINESS DISTRICT

900: In all Business Districts the following uses (and no others) of land and buildings are permitted:

(1) All uses permitted by this Ordinance in "A", "B", "C", or "D" Residence Districts.

(2) Retail store, business or professional office, studio, personal service shop, bakery, confectionery, super market.

(3) Hotel, tourist accommodation, motel, rooming or boarding house, hospital.

(4) Dwelling apartment in connection with business use.

(5) Restaurant, tea room, catering establishment.

(6) Theatre, open air theatre, other lawful place of amusement.

(7) Tavern or taproom.

(8) Mortuary, Funeral Parlor

(9) Tailor shop, dress-making establishment, shoe repair shop.

(10) Bank, other financial institution.

(11) Newspaper or job printing establishment

(12) Warehouse or indoor storage.

(13) Open-air parking lot, excluding automobile junk yard.

(14) Public garage, automobile repair shop, motor vehicle service station, automobile sales agency, outdoor storage in connection with any of the uses mentioned in this paragraph is limited to motor vehicles having affixed thereto a current New Jersey Department of Motor Vehicles Inspection Sticker.

(15) Gasoline Station upon application to and approval of the Board of Adjustment. The approval of the Board of Adjustment shall also be required for the enlargement of any existing gasoline station. The Board of Adjustment, in passing upon any such application, shall consider:

(a) The location of the proposed establishment or establishment sought to be enlarged, its proximity to a school, church or other public gathering place and

(b) Any other factor having a bearing upon the health, safety and general welfare of the residents of the community.

The Board of Adjustment may require public notice and hearing on such application.

No gasoline station shall hereafter be constructed less than 250 feet from a school, church or other public gathering place, measured on a straight line from the nearest points of prospective property lines. No equipment for the dispensing of gasoline or oil shall be placed less than ten (10) feet from any property line. The top of every gasoline storage tank shall be at least 36 inches below the surface of the ground.

(16) Accessory use or structure on the same lot with and customarily incidental to, the main permitted use or structure on the same lot.

901: AREA RESTRICTIONS AND REGULATIONS

In all Business Districts the following area restrictions and regulations are established.

(1) The area of the lot shall be not less than 3000 square feet, the width of the lot shall be not less than 30 feet and the depth of the lot shall be not less than 100 feet.

(2) Not more than sixty-five (65) per cent of the area of the lot may be occupied by buildings.

(3) Off-street parking and off-street loading facilities in connection with such buildings erected after the adoption of this Ordinance and any extensions, additions or enlargement of permitted buildings existing at the time of adoption of this Ordinance shall be provided in an amount not less than hereinafter specified.

(a) The amount of required off street parking facilities as set forth in this section shall be determined in accordance with the following schedule:

A-1 For a hotel, hospital, boarding house or simi-

lar use, one parking space for each 200 square feet of bedroom floor area.

A-2 For a church, auditorium, theatre, stadium recreational establishment or similar use involving the assembly of persons, one parking space for each 6 seats or equivalent accommodations provided.

A-3 For an office building, professional building, or similar use, one parking space for each 400 square feet of floor space.

A-4 For each retail store, shop, bank, or similar establishment, one parking space for each 200 square feet of first floor retail merchandising or commercial area and one parking space for each 400 square feet of such area above or below the first floor.

A-5 For restaurant or similar place dispensing food, drink, or refreshments, one parking space for each 50 square feet of floor area devoted to patron use.

A-6 For the purpose of this section one parking space shall mean an area of not less than 200 square feet, exclusive of drives or aisles giving access thereto for the parking of automobiles.

(b) For any business or premise used for commercial or storage purposes, indoor or outdoor space for loading and unloading of goods and materials shall be provided on the premise or lot whenever the aggregate area used for such purposes is 5,000 square feet or more in accordance with the following schedule:

B-1 5,000 to 20,000 square feet, one space

B-2 20,000 to 40,000 square feet, two spaces

B-3 Over 40,000 square feet, three spaces

B-4 Each loading space shall be at least 25 feet long and 10 feet wide. The minimum clear height of such space within a building shall be 12 feet.

(c) The off street parking facilities required for uses specified in Paragraph (a) of this Section and for other similar uses, shall be on the same lot or parcel of land as the building they are intended to serve unless adequate nearby facilities shall have been approved by the Board of Adjustment.

(d) All off street parking facilities required pursuant to the provisions of this Section shall be paved, drained, lighted and maintained and such facilities shall be arranged for convenient access and safety to pedestrians and vehicles, in the interest of safety, such facilities shall have adequate means of access to and egress from a street and such access driveways shall be at least 10 feet wide.

(4) There shall be a front yard on each street on which the lot abuts, which yard shall be not less than 10 feet in depth.

(5) There shall be a rear yard on the lot, which yard shall be not less than fifteen feet in depth.

902: BULK RESTRICTIONS AND REGULATIONS

In all Business Districts the following bulk restrictions and regulations are established:

(1) The maximum height of buildings shall not exceed four (4) stories or fifty (50) feet.

903: DWELLINGS Any dwelling erected in a Business District shall be under the same limitations and of the same size as if it were being built in an "A" Residence District and no dwelling shall be erected in a Business District without prior approval of the Board of Adjustment.

ARTICLE X

AGRICULTURAL DISTRICT

1000: USE RESTRICTIONS AND REGULATIONS

In all Agricultural Districts the following uses (and no others) of land and buildings are permitted.

(1) Single Family detached dwelling.

(2) Tilling of the soil for profit.

(3) The raising of cattle and other animals normally raised on a farm, except hogs and pigs in excess of twenty (20).

(4) Roadside stand for sale of farm or nursery products produced on the premises where offered for sale.

(5) Dog, or other pet kennels when authorized by the Board of Adjustment.

(6) Accessory use on the same lot with and customary and incidental to any of the foregoing permitted uses including tenant houses used as residence for tenant farmers employed on the same parcel of land.

1001: AREA RESTRICTIONS AND REGULATIONS

In all Agricultural Districts the following area restrictions and regulations are hereby established.

(1) The area of the lot shall be not less than five (5) acres.

(2) The keeping or raising of livestock and poultry on parcels of land less than ten (10) acres in

area shall be limited to the keeping and raising of two (2) head of livestock or one hundred (100) fowl per acre.

(3) Any building used for the keeping or raising of livestock or poultry shall be situated not less than one hundred (100) feet from any street line or dwelling other than the owners' dwelling, and not less than fifty (50) feet from the owners' dwelling or any property line.

(4) Roadside stands shall be situated not less than twenty (20) feet from any street line and off street parking areas shall be provided.

(5) Kennels, when specially authorized, shall be situated not less than one hundred (100) feet from any dwelling other than the owners' dwelling and not less than fifty (50) feet from any property line.

1002: BULK RESTRICTIONS AND REGULATIONS

In all Agricultural Districts the following bulk restrictions and regulations are established.

(1) All buildings used as dwellings shall conform to requirements established in "A" Residence Districts, Article 802.

ARTICLE XI

INDUSTRIAL DISTRICT

1100: USE RESTRICTIONS AND REGULATIONS

In any Industrial District lands may be used and buildings or structures may be erected, altered or used for any lawful purpose except the following:

(1) Acetylene Gas Manufacture
(2) Ammonia, Chlorine or bleaching power manufacture
(3) Arsenal
(4) Asphalt manufacturing or refining.
(5) Blast Furnace
(6) Locomotive or railway car manufacture, or shops operating reciprocating riveting hammers or chisels with a shaft more than three-quarters of an inch in diameter.
(7) Brick or tile yard.
(8) Carbon, lampblack, shoe blacking or stove polishing manufacture.
(9) Celluloid and other cellulose products manufacture.
(10) Coke Ovens
(11) Creosote treatment or manufacture.
(12) Distillation of coal, wood or bones.
(13) Explosives, fireworks or match manufacture.
(14) Fat rendering.
(15) Fertilizer manufacturer or potash refining.
(16) Glue size or gelatine manufacture and recovery from fish or animal offal.
(17) Incineration, reduction or dumping of offal, garbage or refuse.
(18) Lime, gypsum, cement, plaster or plaster of Paris manufacture.
(19) Linoleum or oil cloth manufacture.
(20) Ore reduction.
(21) Paint, oil, varnish, turpentine, shellac or enamel manufacture.
(22) Petroleum refining.
(23) Printing Ink Manufacture
(24) Pyroxyline plastic manufacture or articles therefrom
(25) Raw hides or skins, storage, curing or tanning.
(26) Rubber manufacture from the crude or scrap material.
(27) Sand paper and emery cloth manufacture.
(28) Sauerkraut manufacture.
(29) Slaughtering of animals, or sausage manufacture.
(30) Smelting of iron, cooper, tin, zinc, or lead.
(31) Soap, soda and washing compound manufacture.
(32) Starch, glucose of dextrine manufacture.
(33) Stock yards.
(34) Sulphurous, sulphuric, nitric, or hydrochloric acid manufacture.
(35) Tallow, grease, lard or candle manufacture or refining.
(36) Tar distillation or manufacture of dyes.
(37) Tar roofing or waterproofing manufacture.
(38) Vinegar manufacture.
(39) Yeast manufacture.
(40) Wool pulling or scouring.
(41) Junk yard.

No land, premises or building shall be used for any trade, industry or use which is noxious or offensive by reason of the emission of odor, dust, smoke, gas or noise, or any other reason, nor shall there be permitted any use which constitutes or may constitute a fire or explosive hazard.

1101: AREA RESTRICTIONS AND REGULATIONS

In all Industrial Districts the following area restrictions and regulations are established.

(1) The area of the lot shall be not less than fifteen thousand (15,000) square feet and the width of the lot shall not be less than one hundred (100) feet at the building line.

(2) Not more than sixty (60) per cent of the area of the lot may be occupied by buildings.

(3) There shall be a front yard on each street on which the lot abuts, which yard shall not be less than fifteen (15) feet in depth.

(4) There shall be two (2) side yards on the lot, neither of which shall be less than fifteen (15) feet in width.

(5) There shall be a rear yard on the lot, which shall be not less than fifteen (15) feet in depth.

(6) Off street parking and off street loading facilities in connection with such buildings erected after the adoption of this Ordinance and any extension, addition or enlargement of permitted buildings

existing at the time of the adoption of this Ordinance, shall be provided in accordance with Article IX, Paragraph 901:(8) of this Ordinance except as follows:

(a) For a manufacturing establishment or industrial plant one parking space shall be provided for each 400 square feet of floor area, exclusive of storage space.

(b) For any building or premise used for industrial purposes, indoor or outdoor space for loading and unloading of goods and materials shall be provided on the premise or lot whenever the aggregate area used for such purpose is 6,000 square feet or more, in accordance with the following schedule:

B-1 6,000 to 20,000 square feet, one space

B-2 20,000 to 40,000 square feet, two spaces

B-3 Over 40,000 square feet, three spaces

B-4 Each loading space shall be at least 25 feet long and 10 feet wide. The minimum clear height of such space within a building shall be 12 feet.

1102: BULK RESTRICTIONS AND REGULATIONS

In all Industrial Districts the following bulk restrictions and regulations are established.

(1) The maximum height of buildings shall not exceed fifty (50) feet, provided, however, that auxiliary structures, the use of which is incidental to the permitted use, may extend to a greater height with prior approval of the Board of Adjustment.

1103: DWELLINGS

And dwelling erected in an Industrial District shall be under the same limitations and of the same size as if it were being built in an "A" Residence District, and no dwelling shall be erected in an Industrial District without prior approval of the Board of Adjustment.

ARTICLE XII

PRIVATE GARAGES

1200: LOCATION ON LOT

A private garage in a residential district shall be permitted only when used as an accessory building to a dwelling on the same lot. A private garage may be either a separate building or it may be attached to or be an integral part of the dwelling to which it is accessory. An attached private garage shall not be closer to the front street line than the front line of the dwelling to which it is accessory. An "attached private garage" as used in this Article, shall include a garage attached to a residence by a permanent "breezeway" not more than 15 feet long. A detached private garage shall not be closer to the front street line than the rear extremity of the dwelling to which it is accessory. A private garage shall be at least five feet from the side and rear lot lines, except that this shall not prevent the building of a common or joint garage upon adjoining lots.

ARTICLE XIII

SIGNS

1300: DEFINITION: An "Advertising Sign" is defined to be a sign which directs attention to a business, service, commodity or entertainment conducted, sold or offered elsewhere than upon the premises. A "Business Sign" is defined to be a sign which directs attention to a business or profession conducted upon the premises. A "for sale" or "for rent" sign relating to the property on which it is displayed shall be deemed a business sign.

1301: In Residence Districts, no sign shall be permitted except the following: a name plate not more than two square feet in area bearing the name and profession or home occupation of a person residing on the premises; a temporary sign not exceeding eight square feet in area pertaining to the lease or sale of the lot or building on which it is placed; a sign or bulletin board, not exceeding twelve square feet in area, erected upon the premises of a church or similar non-profit institution for the purpose of displaying the name and activities thereof, or the services therein provided. Any sign or name plate permitted by this paragraph shall be at least fifteen feet back from the curb line, or five feet back from the street line if there be no curb.

1302: In a Business District or Industrial District there shall be permitted:

(a) Any type of sign permitted in a Residence District.

(b) A Business sign, which shall in no event project beyond the street line.

(c) An Advertising Sign, which shall in no event project beyond the street line.

1303: Nothing in this Article shall affect the placing of signs required by the State, County or Township in the exercise of their governmental function.

1304: No sign larger than three (3) square feet except a temporary sign permitted by 1301 shall be permitted unless and until a permit for the same shall have been first obtained from the person hereinafter designated to enforce the provisions of this Ordinance.

1305: No sign of any kind shall be so placed, at or near an intersection, in such a fashion as to obstruct the view of motorists across the corner.

ARTICLE XIV

1401: FENCES, HEDGES AND WALLS

At or near an intersection, no fence, hedge, wall, shrubbery or other similar matter shall be permitted to obstruct the view of

motorists across the corner; provided however, that this shall not prohibit the erection or growing of a fence, hedge, wall or shrubbery not exceeding two feet six inches in height; and provided further, that this prohibition shall be applicable for a distance of only 100 feet from point where the center lines of the intersecting streets meet.

1402: All fences, walls and other similar structures shall be securely built, and adequately anchored.

1403: No fence, wall, hedge shrubbery or similar matter shall encroach upon the right of way of any street.

ARTICLE XV

1500: Any nonconforming use of land or structure existing on the effective date of this Ordinance may be continued upon the lot or in the building so occupied, and any such structure may be restored or repaired in the event of partial destruction thereof.

ARTICLE XVI

1600: Building Permits: For the purpose of preserving the integrity of the official map of a municipality, no permit shall be issued for any building in the bed of any street or drainage right of way shown in the official map, or in a plot filed pursuant to the Municipal Planning Act, 1953, or the Land Subdivision Ordinance of the Township of Gloucester, before adoption of the official map, except as herein provided. Whenever one or more parcels of land upon which is located the bed of such a mapped street or drainage right of way or any park or playground location reserved pursuant to section 8, R. S. 40:55-1.38, N. J. S. A., cannot yield a reasonable return to the owner unless a building permit is granted, the Board of Adjustment, in any municipality which has established such a board, may, in a specific case, by a majority vote of its members, grant a permit for a building in the bed of such mapped street or drainage right of way or within such reserved location of a public park or playground, which will as little as practicable, increase the cost of opening such street or tend to cause a minimum change of the official map and the Board shall impose reasonable requirements as a condition of granting the permit so as to promote the health, morals, safety and general welfare of the public and shall inure to the benefit of the municipality. If no Board of Adjustment has been appointed, the Township Committee shall exercise such authority and be subject to the same restrictions.

Before any action is taken hereunder the Board or governing body shall hold a public hearing at which parties in interest and others shall be given an opportunity to be heard. Ten days notice of said hearing shall be published in an official publication circulating in the municipality.

1601: No permit for the erection of any building shall be issued unless the building lot abuts a street giving access to such proposed structure, which has been placed on the official map, or, if no official map or until such map is adopted, unless such street is (a) an existing State, County, or municipal street or highway, or (b) a street shown upon a plot approved by the governing body or planning board, or (c) a street or plot duly filed in the office of the County recording office, prior to the passage of the Land Subdivision Ordinance of Township of Gloucester or the Municipal Planning Act 1953, or any act repealed thereby which required prior approval of plats by the governing body or other authorized body. Before any such permit shall be issued, such street shall have been certified to be suitably improved to the satisfaction of the Township Committee, or such suitable improvement shall have been assured by means of a performance guarantee, in accordance with standards and specifications approved by the Township Committee, as adequate in respect to the public health, safety and general welfare of the community and the particular street.

1602: When the enforcement of Sections 1600 and 1601 of this Ordinance would entail practical difficulty or unnecessary hardship, or where the circumstances do not require the structure to be related to a street, the applicant for the permit may appeal from the decision of the Administrative Officer having charge of the issuance of of permits to the Board of Adjustment, if there be a Board of Adjustment, or, if not, to the Township Committee. The same provisions shall apply to such appeals and to such Board or body as are provided herein or are provided in respect to Zoning Regulations. The Board, may, in determining any such appeal, make reasonable exceptions and issue a permit subject to conditions that will assure adequate access for fire-fighting equipment, ambulances, and other emergency vehicles necessary for the protection of health and safety and that will protect any future street layout shown on the official map or in a master plan of streets duly adopted by a Planning Board. Where such master plan of streets exists, the Board of Adjustment or Township Committee, as the case may be, shall refer the application to the Planning Board for report and recommendation before taking action.

ARTICLE XVII

1700: Administration and Enforce-

ment. The Township Committee shall appoint an officer, whose title shall be Zoning Officer of the Township of Gloucester, hereafter referred to as the Zoning Officer, to administer and enforce the provisions of this ordinance. He shall be appointed for the term of one year beginning the first day of January, (except that the Zoning Officer first appointed shall serve from the date of his appointment and qualification to the first day of January next following), and shall receive such compensation for his services as shall be fixed by Ordinance.

1701: Duties: The Zoning Officer shall have the general duty and authority to administer and enforce the provisions of this ordinance, except as otherwise provided by law or this ordinance. He shall, except as otherwise provided in this Ordinance, (a) examine and file all applications for zoning permits; (b) issue permits for such construction and uses as are in accordance with the terms and provisions of this Ordinance, or as authorized by statute or order of the Board of Adjustment; (c) record and file all applications for zoning permits, together with the plans, specifications and other documents or papers accompanying such applications; (d) collect all fees that may be payable to the Township under this Ordinance and render an account to the Township at the end of each calendar month, and pay over to the Township Treasurer the total amount of the fees collected; (e) make such reports to the Township Committee with respect to his work and the operation of this Ordinance as may be required by the Township Committee; (f) institute and conduct lawful proceedings to prevent threatened violations of this Ordinance and to correct conditions resulting from the violation thereof; and (g) prosecute all persons who shall have violated any of the provisions of this Ordinance.

1702: Zoning Permits. No person hereafter shall erect, locate or alter any building or portion thereof, or change the use of any land, without first obtaining a Zoning Permit therefor and all applications for zoning permits shall be in writing; shall be addressed to the Zoning Officer, except as otherwise provided in this Ordinance; shall be signed by the owner of record of the land; shall be made on a form provided and prescribed by the Township; shall contain all information required and be accompanied by plans and specifications, plus any other information required by the Zoning Officer or the Township Committee. The said application shall contain sufficient information of the plans and use of the land and premises so that the Zoning Officer or the Township Committee may determine whether the proposed use or change of use of land or premises is in accordance with the provisions of this Ordinance, Statute or order of the Board of Adjustment.

A Zoning Permit shall be granted or refused by the Zoning Officer within ten days after receiving a valid application.

All applications filed, together with plans and specifications, shall be public records.

1703: Certificate of Conformity. Upon the completion of the erection, location, alteration of any building, a portion thereof for which a zoning permit shall have been issued, but prior to the use or occupancy of such building or alteration, the holder of the permit shall notify the Zoning Officer of such completion and he shall inspect the same. In the event said inspection discloses that the erection, location or alteration of said land or premises has been done in accordance with the terms and conditions of the Zoning Permit and this Ordinance, Statute or Order of the Board of Adjustment, he shall issue a certificate in writing, to be designated as a "Certificate of Conformity", wherein he shall certify that said work has been performed in accordance with the terms of this Ordinance and that he has inspected and approved the same as being in conformity with all zoning requirement of the Township. Such Certificate of Conformity may be endorsed by the Zoning Officer upon the original Zoning Permit.

1704: No person shall use or occupy any building hereafter erected or located on any lot, or use or occupy any alteration of any building or lot, without first obtaining a Certificate of Conformity.

1705: The Zoning Permit and Certificate of Conformity required by this Ordinance are in addition to, and not in lieu of, any and all other permits and certificates that are or may be required by law, by any governmental agency or by virtue of any other Ordinance or Ordinances of the Township of Gloucester.

1706: The Zoning Officer is charged with the duty hereunder of enforcing the provisions of this Ordinance. However, any person having knowledge of the violation hereof, or any of the provisions of this Ordinance, may instigate proceedings for the prosecution of the person or persons so violating this Ordinance.

1707: Fees. The Township Committee of the Township of Gloucester shall establish and fix reasonable fees to be paid to the Zoning Officer for the account of the Township, upon the issue of Zoning Permits and Certificates of Conformity.

ARTICLE XVIII

1800: Board of Adjustment. The

Township Committee of the Township of Gloucester shall appoint a Board of Adjustment consisting of five members, in the manner prescribed by law.

1801: The Board of Adjustment shall consist of five (5) members. They shall be appointed by the Township Committee. A member must be a resident of the Township of Gloucester; must hold no elective office under the Township. Members shall serve without compensation and shall be subject to removal from office by the Township Committee for cause, in written charges, and after public hearing.

The terms of office shall be as follows:

a. The first member appointed shall be for a term of one year.

b. The second member appointed for a term of two years.

c. The third member appointed for a term of three years.

d. The fourth member appointed for a term of four years.

e. The fifth member appointed for a term of five years.

Appointments shall be made on the first day of January of each year and the successor of each appointed shall serve for a full term of five years; provided that in case of a vacancy, each appointment shall be for the unexpired term only.

1802: The members of the Board of Adjustment first chosen shall meet within one week next after their appointment and organize by the election of a chairman from among their own members, by the election of a secretary, (who may, but need not be, chosen from among members of the Board), and by the adoption of rules. Subsequent organization meetings of the Board shall be held annually during the first week of January. The Board shall hold at least one regular stated meeting each month at eight o'clock in the evening, on such day of the week as they shall designated, and shall hold such other meetings as the Board may determine, or as may be called by the Chairman. All meetings shall be open to the public. In the absence of the Chairman, the members present may designate an acting chairman, who shall have the powers and perform the duties of the chairman during his absence. A majority of all members of the Board shall be necessary to constitute a quorum, and all orders, determinations and other acts of the Board shall require the affirmative vote of not fewer than three members. As required by law, the Board shall keep minutes of all its proceedings and showing the vote of the respective members upon each question presented and, if a member be absent or fails to vote, the minutes shall indicate such fail; and the Board shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the Board as a public record.

1803: Powers and Duties: The Board of Adjudgment shall have and exercise all the jurisdiction and authority, perform all the duties granted to or devolved upon it by law, including but not limited to, Revised Statutes of New Jersey 40:55-30 to 40:55-31, together with the authority and duties confined by this ordinance.

1804: Granting of Variances: A fee of $25.00 (Twenty-five Dollars), shall be paid to the Township Clerk upon filing proper application for requested variance, the fee to cover cost of spublic notice and other expenses.

ARTICLE XVIV

1900: Township Committee: As provided by law, the regulations, limitations and restrictions established by this Ordinance may be amended, changed, modified or repealed and the boundaries of the Districts herein established may be changed by Ordinance adopted by the Township Committee in the manner prescribed by law and such general power of amendment, change, modification and repeal is hereby expressly reserved to the Township Committee.

1901: In addition to the publication, as required by law, of notice of the time and place of the public hearing to be afforded by the Township Committee, upon consideration for final passage of any Ordinance referred to in Section 1900 of this Ordinance and introduced and passed on first reading by the Township Committee, a copy of said Ordinance and notice of the time and place of public hearing shall be forwarded by the Township Clerk by mail to all members of the Board of Adjudgment and to every local civic association or other association or other association of persons residing in the said Township that shall have registered their names and addresses for such purposes with the Township Clerk; provided, however, that failure to forward any such notice or notices shall not invalidate any such Ordinance if otherwise adopted in the manner prescribed by law.

1902: As provided by law, in the event of a protest against any proposed change, (referred to in Section 1900 of this Ordinance) signed by the owners of twenty (20%) per cent or more either of the area of the lots included in such proposed change, or those immediately adjacent in the rear thereof extending one hundred feet (100) therefrom or those directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the

members of the Township Committee.

ARTICLE XX

2000: Exceptions: (a) Any land subdivision, preliminary plat, which has been approved by the Township Planning Board prior to adoption of this Ordinance shall not be subject to this Ordinance; (b) Where a building permit has been issued for any purpose prior to the adoption of this Ordinance, the purpose shall not be subject to this Ordinance; (c) however, if the terms and conditions of the land subdivision Ordinance covering time limits for final plats, are not complied with, then this Ordinance shall prevail.

ARTICLE XXI

2100: Penalties: Any person who shall violate this Ordinance, or do any act or thing therein prohibited, or refuse or fail to do any act or thing therein required to be done, or refuse or fail to comply with an order of the Zoning Officer, or an order of the Board of Adjudgment, shall upon conviction thereof before any judicial officer authorized to hear and determine the matter, forfeit and pay such fine not exceeding the sum of Two Hundred Dollars, ($200.00) as shall be imposed by such judicial officer in his discretion or, if the party so convicted be a natural person, be imprisoned in the County Jail for such term not exceeding ninety (90) days as such judicial officer, shall have power in his discretion, to impose sentence of both fine and imprisonment, not exceeding the maximum limits hereinbefore fixed.

2101: In addition to the right, as hereinbefore authorized, of any person having knowledge of the violation of this Ordinance, to initiate prosecution therefor, the Zoning Officer of the Township or any other interested person shall have the right to any and all remedies available by law, including injunctive relief, restraining order, or such other relief as the Courts of this State may provide.

2102: All Ordinances and parts of Ordinances of the said Township of Gloucester heretofore adopted that are inconsistent with the terms and provisions of this Ordinance are hereby repealed but to the extent of such inconsistency only and the provisions of Section 2 of this Ordinance shall be given full effect.

2103: This Ordinance shall take effect upon its final passage, adoption and publication in the manner prescribed by law.

NOTICE

The above Ordinance was adopted on first reading by the Mayor and Township Committee of the Township of Gloucester, at a special meeting held in the Municipal Hall of the Township of Gloucester, Blackwood, New Jersey, at 8:00 P.M., on Monday, May 20, 1957. Said Ordinance will be considered on second and final reading at a special meeting to be held in said Municipal Hall, Blackwood, New Jersey, at 8:00 P.M., on Monday, June 17, 1957 at which time and place, or at anytime and place to which such meeting may be adjourned, all persons interested will be given an opportunity to be heard concerning such Ordinance.

ESTELLA S. BROWN
Township Clerk

LEGAL NOTICE

AN AMENDMENT TO A PROPOSED ORDINANCE ENTITLED, "AN ORDINANCE OF THE TOWNSHIP OF GLOUCESTER, IN THE COUNTY OF CAMDEN, AND STATE OF NEW JERSEY, DIVIDING THE AREA OF THE SAID TOWNSHIP INTO ZONES OR DISTRICTS AND RESTRICTING AND REGULATING THEREIN THE USE OF LAND AND THE NATURE, USE, LOCATION AND CONSTRUCTION OF BUILDINGS; PROVIDING FOR THE APPOINTMENT OF A ZONING OFFICER, A BOARD OF ADJUSTMENT, AND PRESCRIBING THE DUTIES AND FUNCTIONS THEREOF; PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS ORDINANCE AND PENALTIES FOR THE VIOLATION HEREOF", adopted on first reading by the Mayor and Township Committee of the Township of Gloucester at a special meeting held in the Municipal Hall of the Township of Gloucester, Blackwood, New Jersey, at 8:00 P.M. on Monday, May 20, 1957.

BE IT ORDAINED by the Township Committee of the Township of Gloucester, in the County of Camden and State of New Jersey, that:

an Ordinance heretofore adopted on first reading by the Township Committee of the Township of Gloucester on May 20, 1957, and thereafter published as required by law, entitled "An Ordinance of the Township of Gloucester, in the County of Camden, and State of New Jersey, Dividing the Area of the Said Township into Zones or Districts and Restricting and Regulating Therein the use of Land and the Nature, Use, Location and Construction of Buildings; Providing for the Appointment of a Zoning Officer, A Board of Adjustment and Prescribing the Duties and Functions Thereof; Providing for the Administration and Enforcement of thei Ordinance and Penalties for the Violation Hereof", be and the same is hereby AMENDED to read as follows:

1. Article II, paragraph 201 of said Ordinance is hereby amended to read as follows:

201: Boundaries of Districts: The boundaries of these districts are

hereby established as shown on the map entitled "Zoning Map of Gloucester Township, Camden County, N. J., Dated September, 1955, Revised June 17, 1957", which accompanies and is hereby declared to be a part of this ordinance and a copy of which is on file with the Gloucester Township Clerk. Figures indicating number of feet appearing on said map between a road, street, avenue, or railroad right-of-way, and the boundary line of a District, mean that the boundary line of the District at such location runs parallel with the center line of the road, street, avenue, or railroad right-of-way at the distance therefrom indicated by the number of feet marked. Where said map indicates a district boundary approximately in a street, the center line of such street shall be construed to be the boundary.

2. This amendment shall take effect and become a part of the Ordinance herein above referred to upon publication and final passage and adoption according to law.

PUBLIC NOTICE

Notice is hereby given that the foregoing amendment was introduced and passed by the Township Committee of the Township of Gloucester at a special meeting held in Municipal Hall, East Church Street, Blackwood, New Jersey, on Monday, June 17, 1957, and will be considered at a regular meeting of said Township Committee on Monday, July 1, 1957, at 8:00 P.M. in said Municipal Hall, at which time objections to said Amended Ordinance may be made and the said Ordinance, so amended, will be considered for final passage in accordance with law.

ESTELLA S. BROWN
Township Clerk
Township of Gloucester

AN ORDINANCE OF THE TOWNSHIP OF GLOUCESTER, IN THE COUNTY OF CAMDEN, AND IN THE STATE OF NEW JERSEY, DIVIDING THE AREA OF THE SAID TOWNSHIP INTO ZONES OR DISTRICTS AND RESTRICTING AND REGULATING THEREIN THE USE OF LAND AND THE NATURE, USE, LOCATION AND CONSTRUCTION OF BUILDINGS: PROVIDING FOR THE APPOINTMENT OF A ZONING OFFICER, A BOARD OF ADJUSTMENT, AND PRESCRIBING THE DUTIES AND FUNCTIONS THEREOF: PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS ORDINANCE AND PENALTIES FOR THE VIOLATION THEREOF.

PUBLIC NOTICE

Notice is hereby given that the above titled ordinance, introduced and passed on first reading by the Township Committee of the Township of Gloucester, at a special meeting on May 20, 1957, received second reading and was amended at a special meeting of the aforesaid Township Committee on June 17, 1957, and was adopted at a regular meeting of the aforesaid Township Committee held in Municipal Hall, East Church Street, Blackwood, N. J., on Monday, July 1, 1957.

MRS. ESTELLA S. BROWN
Township Clerk
Township of Gloucester

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IN THE

Supreme Court of the United States

October Term, 1962.

No. 572.

HAROLD E. VICKERS,

Appellant,

vs.

TOWNSHIP COMMITTEE OF GLOUCESTER TOWNSHIP, et al.,

Appellees.

On Appeal from New Jersey Supreme Court.

MOTION TO DISMISS APPEAL.

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2. Was the amendment to Gloucester Township's Zoning Ordinance lawfully enacted? 6

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1962.

No. 572

HAROLD E. VICKERS,

Appellant,

vs.

TOWNSHIP COMMITTEE OF GLOUCESTER TOWNSHIP, et al.,

Appellees.

MOTION TO DISMISS APPEAL.

The appellees, the Township Committee of Gloucester Township, et al., submits herewith this motion to dismiss the appeal of Harold E. Vickers, under Rule 16, Par. 1. (a) and (b) of the United States Supreme Court, on the following grounds:

1. That the federal questions sought to be reviewed were not properly raised in the courts below nor argued thereon by the appellant and hence were not passed on by the court below either implicitly nor expressly; and

2. That the judgment rests on an adequate non-federal basis; and

ii. Therefore, that the appeal is not within the jurisdiction of this court.

STATEMENT OF THE CASE.

The appellees rest upon the Statement of the Case contained in the *Statement of Jurisdiction*, pages 5 to 7 thereof, excepting the description of the property where the appellant's proposed trailer camp was to be situated. The appellant has relied on a description contained in the dissenting opinion, Appendix C page 45a. The appellees rely on the more lucid description contained in the majority opinion of the New Jersey Supreme Court which is:

> "The southern section, where plaintiff's lands are situated, includes several residential districts and a business district, but is for the most part relatively undeveloped. The Township's sanitary land-fill area, where non-garbage refuse is disposed and promptly covered by earth; is located about 100 yards from plaintiff's land. Although most of the southern section is in the industrial district, one-family houses can be constructed in that district if the Board of Adjustment gives permission. In fact, home developers have purchased 500 acres within the industrial district and adjacent to plaintiff's property. Mayor Yost and Mr. Motta, chairman of the Planning Board, stated the Township was continually considering changes in the existing zones in order to benefit the Township. The record and zoning map indicate that certain areas which had been previously zoned residential, have recently been reclassified industrial. There was also testimony that the Township, in an effort to eliminate blighted

structures, had on February 8, 1960, appointed a Public Officer who is actively engaged in a program to rid the township of properties which are in 'bad condition,'. . ."

Appellant's Statement of Jurisdiction, Appendix B, page 8a.

ARGUMENT.

The appellant's precarious position on this appeal is predicated upon a 6 line non-illuminatory catch-all statement contained in his second complaint before the trial court below "deprives plaintiff of the use of his property without due process of law, deprives plaintiff of the equal protection of the laws and is otherwise violative of the rights guaranteed to said plaintiff and others similarly situate by virtue of the Constitution of the State of New Jersey and of the United States of America." *Statement of Jurisdiction*, page 7. However, the appellant did not raise this federal point, nor argue thereon during the trial, nor in his appeal to the Appellate Division of the Superior Court of New Jersey, nor did he make such a contention before the Supreme Court of New Jersey. The appellant in effect waived and abandoned his allegation of being deprived of "due process of law" and "equal protection of the laws" by his failure to develop the same before the trial court and by omitting argument before the Appellate Division of the Superior Court of New Jersey and the Supreme Court of New Jersey.

That the questions which the appellant now seeks to have determined by this court were not presented to the Appellate Courts of New Jersey, is made clear by reference

to the briefs filed by the Appellant in the courts below. Annexed hereto are Schedules A and B which are respectively appellant's statement of questions involved presented in his brief to the Appellate Division of New Jersey Superior Court, Appendix B and appellant's counter-statement of questions presented to the Supreme Court of New Jersey. The Supreme Court of New Jersey in its opinion made crystal clear the only issues which it was deciding in this case.

> "The parties agree the only issues on this appeal are: (1) In the circumstances, could the Township through its zoning power totally exclude trailer camps from the municipality? and, (2) Were the procedural requirements of N. J. S. A. 40:55-35 met in the adoption of the zoning ordinance amendment?"
>
> *Opinion of Supreme Court of New Jersey, Statement of Jurisdiction*, Appendix B, page 10a, 37 N. J. 232, 181 A. 2d 129.

Now, at this late date the appellants are trying to enlarge the scope of their appeal and to take up the cudgel of lack of due process, a cudgel which they long ago dropped, but having lost all else now seek to use.

This court has long maintained the principle that, if a federal right was not set up or claimed in the proper court below and argued throughout, the judgment of the highest court of the State in the action is conclusive, so far as the right of review in the Supreme Court of the United States is concerned: *Spies v. Illinois*, 123 U. S. 131, 181 (1887); *Wolfe v. N. Carolina*, 364 U. S. 177 (1960); *Pennsylvania R. R. v. Illinois Brick Co.*, 297 U. S. 447 (1936). Indeed, this court in dismissing for lack of jurisdiction has included references to waiver: *Harding v. Illinois*, 196 U. S. 78

(1904); *Chesapeake & O. Ry. v. McDonald*, 214 U. S. 191, 195 (1909).

In a number of cases this court has decided where a party did not maintain its contentions concerning federal rights through state proceedings that this failure constituted waiver: *Central Union Tel. Co. v. City of Edwardsville*, 269 U. S. 190 (1925); *Parker v. Illinois*, 333 U. S. 571 (1948); and *Michel v. Louisiana*, 350 U. S. 91 (1955).

Not only does the appellant attempt to raise questions of law not presented to the Appellate Courts of New Jersey but he also has placed before this court in his Statement of Jurisdiction many facts and opinions not introduced into evidence nor even argued in the court below. An egregious example of this approach of introducing new facts, theories, and opinions, to this court which were not presented below is found on pages 17, and 18 of the appellant's Statement of Jurisdiction.

CONCLUSION.

The appellees respectfully request that under Rule 16 of this court and the prior determinations of this court that this appeal should be dismissed because the appellant has failed, waived and abandoned any claims respecting impairment of his federal rights so that these questions were not considered and passed upon by the courts below.

Respectfully submitted,

M. GENE HAEBERLE,
Counsel for Appellee.

APPENDIX A.

The following is a quotation from the brief presented in behalf of Harold E. Vickers before the Superior Court of New Jersey, Appellate Division—Docket No. A-965-59, in the matter of Harold E. Vickers, Plaintiff-Appellant, v. Township Committee of Gloucester Township, et als., Defendants-Respondents.

STATEMENT OF QUESTIONS INVOLVED.

"1. was the amendment of April 22, 1960 to Gloucester Township's Zoning Ordinance lawfully enacted?

"2. Was the complete prohibition of trailer parks anywhere within Gloucester Township, as accomplished by the ordinances of April 22, 1960, lawful?"

APPENDIX B.

The following is a quotation from the brief presented in behalf of Harold E. Vickers before the Supreme Court of New Jersey, Docket No. 3555, in the matter of Harold E. Vickers, Plaintiff-Respondent, v. Township Committee of Gloucester Township, et al., Defendants-Appellants.

COUNTER-STATEMENT OF QUESTIONS INVOLVED.

"1. Was the Appellate Division correct in holding that the Township of Gloucester could not by its Zoning Ordinance prohibit the existence of trailer parks and trailer park business everywhere within the limits of the municipality?

"2. Was the amendment to Gloucester Township's Zoning Ordinance lawfully enacted?"

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 572

HAROLD E. VICKERS,

Appellant,

vs.

TOWNSHIP COMMITTEE OF GLOUCESTER TOWNSHIP, *et al.*,

Appellees.

On Appeal from New Jersey Supreme Court

BRIEF IN OPPOSITION TO MOTION TO DISMISS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 572

HAROLD E. VICKERS,

Appellant,

vs.

TOWNSHIP COMMITTEE OF GLOUCESTER TOWNSHIP, *et al.*,

Appellees.

BRIEF IN OPPOSITION TO MOTION TO DISMISS

Harold E. Vickers, Appellant, files his brief in opposition to Motion to Dismiss by Appellees, Township Committee of Gloucester Township, et al. Significantly, the Motion to Dismiss contains no argument that the federal questions presented are less than substantial.

ARGUMENT

The federal constitutional questions were presented to and considered by the State courts.

The Appellees argue that the federal questions sought to be reviewed were not properly raised in the state courts, and were not passed on by the Court below. This conten-

tion is difficult to understand. Two basic contentions were advanced by the Appellant in the litigation below. In one, he challenged the validity of the amendment to the zoning ordinance in question on procedural grounds, alleging that the amendment was void because it was enacted in contravention of procedures set forth in the enabling statute, N.J.S.A. 40:55-35. In the other contention, he challenged the constitutional authority of the Township Committee of Gloucester Township to enact an ordinance which totally excluded trailer or mobile home parks. As noted at page 7 of the Statement of Jurisdiction, "the appellant raised the constitutional questions included in his Notice of Appeal to this Court upon the institution of his action challenging the validity of the Zoning Ordinance by asserting in paragraph 13 of his second complaint, that the zoning ordinance 'deprives plaintiff of the use of his property without due process of law, deprives plaintiff of the equal protection of the laws and is otherwise violative of the rights guaranteed to said plaintiff and others similarly situate by virtue of the Constitution of the State of New Jersey and of the United States of America.'" Observing that the phrases "due process of law" and "equal protection of the laws" do not appear in the Constitution of the State of New Jersey, 1947, the clear import of the language used, as well as the express reference to the Constitution of the United States, is to raise federal constitutional questions.

At each stage of the proceedings in the state courts it is clear that the court considered the constitutional questions raised by the pleadings,[1] although not expressly label-

[1] The Revised Rules of the Appellate Courts of New Jersey have abolished "assignments of error, bills of exceptions, grounds of appeal, specification of causes of reversal, and writs of errors", R.R. 1:2-9, 2:2-5. An appeal, where permitted, is taken by serving a notice of appeal. R.R. 1:2-8, 2:2-5.

ing them as federal constitutional questions. The opinions below discuss in great detail the lawful exercise of the police power and the arbitrariness and unreasonableness of the ordinance. The Appellees do not specifically assert that the references to constitutional questions are to the state constitution and not the federal constitution. Nevertheless, since the Constitution of the State of New Jersey, 1947, in its singular reference to the police power, (Article 4, Section 6, paragraph 2) states that, "The Legislature may enact general laws under which municipalities, other than counties may adopt zoning ordinances * * * *and the exercise of such authority shall be deemed to be within the police power of the state*", (Emphasis supplied) hereby creating such broad authority, one of the meanings which must be attributable to a discussion of the unlawful exercise of the police power is the question of a violation of the superseding constitutional rights guaranteed by the 14th Amendment to the Constitution of the United States.

There is ample language in the majority opinion of the Court below to reject the baseless assertions of the Appellees' Motion to Dismiss. In framing the issues of the case, the majority opinion noted, "In its answer, the Township contended it had the power to enact the ordinance under its zoning powers and *general police powers.*" (Emphasis supplied) (Statement of Jurisdiction, Appendix B, p. 7a). Thereafter, the principal discussion in that opinion relates to the question of whether the municipality exceeded its authority under the police power and the test used is whether the ordinance is reasonable and there is a substantial relation to the general welfare. On this issue, the majority expressly rejects the doctrine of *Gust v. Tp. of Canton*, 342 Mich. 436, 70 N. W. 2d 772 (1955) which held a similar ordinance invalid as not having a present substantial relationship to the general welfare. The

language used is almost identical to the test announced in *Village of Euclid v. Ambler Realty Corp.*, 272 U. S. 365, 47 S. Ct. 114, 71 L. ed. 303 (1926). Moreover, in stating its decision, the majority in the Court below gave further evidence that it was deciding the constitutional questions in addition to applying New Jersey statutory law when it said, "* * * we hold that the Township Zoning Ordinance amendment barring trailer camps from its industrial district was a valid exercise of its zoning power and was adopted in conformity with the statutory requirements." (Statement of Jurisdiction, Appendix B, p. 23a).

The statement of the issues in the majority opinion which is cited by the Appellees (Motion to Dismiss, p. 4), does not compel a different conclusion. That reference merely states the issues in broad, general terms, which, contrary to the Appellees' position, are inclusive of the constitutional questions.

While admittedly not controlling on the question of whether a constitutional issue was presented to and decided by the New Jersey Supreme Court, brief reference to the dissenting opinion assists in the conclusion that federal constitutional questions were presented. The opening sentence of the dissenting opinion recites that the majority decided "that this particular municipality may constitutionally say, through the exercise of its zoning power that its residents may not live in trailers * * *" (Statement of Jurisdiction, Appendix C, p. 24a) Subsequently, in discussing the issue, the dissent makes several references to "Constitutional law", including an elaborate discussion of the leading opinion of this Court on the zoning power, *Village of Euclid v. Ambler Realty Corp., supra*, (Statement of Jurisdiction, Appendix C, p. 35a, 36a).

To afford the Supreme Court of New Jersey an opportunity to reconsider its ruling in light of the consequence

of its decision in the area of constitutional law, Vickers petitioned that Court for a rehearing. In his petition he urged, with reference to the sub-issue of proper judicial review of zoning ordinances, "Dangerous precedents in the area of Constitutional Law are created if the omission of Court inquiry is sanctioned". He urged also that "Mere assertion by local officials that zoning exclusion is warranted by aesthetic considerations becomes enough to prohibit constitutionally otherwise lawful business." The Supreme Court denied the petition for rehearing on its merits because no Justice who voted with the majority had moved a reconsideration.

Lest any doubt remain that the federal constitutional questions were seasonably urged in the Courts below, the appellant, following the license taken by the appellees in citing the briefs below which are not a part of the official record, reproduces two excerpts from his brief below.

Brief in Appellate Division of the Superior Court:

> "Zoning is fundamentally concerned with the proper utilization of land within a municipality; moreover zoning enactments must be in accordance with a comprehensive plan with emphasis upon districting, according to the particular suitability of land throughout the municipality. Kozesnik v. Montgomery Twp., 24 N. J. 154 (1957); Baskin v. Morristown, 21 N. J. 180 (1956). If the restrictions of a zoning ordinance go beyond those limits they are invalid inasmuch as they *deprive the owner of property rights without due process of law*." (Emphasis supplied.)

Brief in Supreme Court of New Jersey:

> "If the restrictions of a zoning ordinance go beyond those limits they are invalid *inasmuch as they deprive the owner of property rights without due process of law*." (Emphasis supplied.)

Under any one of a number of precedents, too numerous for complete citation, this Court has jurisdiction in the instant case. Two pertinent holdings of this Court may be noted. First, while it is required that a federal question be drawn in issue by presentation to the State Court, no particular form of words to that end is necessary, and it is sufficient if the effect of the judgment is to deny the claim of invalidity of a State statute. *New York, ex rel. Bryant* v. *Zimmerman*, 278, U. S. 63, 67, 49 S. Ct. 61, 73 L. ed. 184 (1928). Second, the right of review dependent on an adverse decision of a federal question exists in cases where the decision of the question involved is brought in some proper manner to the attention of the State Court, and decided, *or it appears that the judgment rendered could not have been given without deciding the federal question.* *Harding* v. *Illinois*, 196 U. S. 78, 86, 25 S. Ct. 176, 49 L. ed. 394 (1904).

The cases cited by the Appellees at pages 4 and 5 of the Motion to Dismiss are pertinent only so far as they announce the general principle that federal questions must be properly presented to the Court below for decision, and that Court must decide the matter on federal and not independent state grounds. These cases have no particular application to the instant case since the questions of waiver raised therein relate to requirements of state law for perfecting state appeals on constitutional questions, which were not complied with and thus waived; thereby precluding the raising of the questions on appeal to this Court. No such problem exists in the instant case.

There is a brief reference on page 5 of the Motion to Dismiss to the introduction of new facts and theories in the argument made in the appellant's Statement of

Jurisdiction at pages 17 and 18, which were not a part of the record below. However, many of the facts were referred to in the dissenting opinion below (Statement of Jurisdiction, Appendix C, pp. 40a and 41a) and are not presented to this Court on the merits of the questions presented, but to support the uncontested preliminary claim that substantial federal questions are presented.

CONCLUSION

It is respectfully submitted that the Appellees' Motion to Dismiss should be denied and that this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

MILFORD SALNY,
Counsel for Appellant.